



California Regulatory Notice Register

REGISTER 2003, NO. 21-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

MAY 23, 2003

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CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order, call (916) 445-5391. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Room 104, Sacramento, CA 95814-0212.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY:

California Horse Racing Board

A written comment period has been established commencing on May 23, 2003, and closing on July 7, 2003. Written comments should be directed to the Fair Political Practices Commission, Attention Kevin S. Moen, PhD, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the

proposed conflict of interest code(s). Any written comments must be received no later than July 7, 2003. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Kevin S. Moen, PhD, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Kevin S. Moen, PhD, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY:
Franchise Tax Board

A written comment period has been established commencing on May 23, 2003, and closing on July 7, 2003. Written comments should be directed to the Fair Political Practices Commission, Attention Kevin S. Moen, PhD, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than July 7, 2003. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were

mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Kevin S. Moen, PhD, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Kevin S. Moen, PhD, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

ADOPTION

STATE AGENCY:
Labor and Workforce Development Agency

MULTI-COUNTY AGENCY:
Sonoma-Marín Area Rail Transit District

A written comment period has been established commencing on **May 23, 2003** and closing on **July 7, 2003**. Written comments should be directed to the Fair Political Practices Commission, Attention Jeanette Turvill, 428 J Street, Suite 620, Sacramento, CA 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **July 7, 2003**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the costs has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Section 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of

interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revisions and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Jeanette Turvill, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Jeanette Turvill, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. LABOR AND WORKFORCE DEVELOPMENT AGENCY

NOTICE OF INTENTION TO FILE CONFLICT OF INTEREST CODE OF THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY BY THE AGENCY SECRETARY: CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 8, CHAPTER 99, SECTION 58800-58899 AND APPENDIX

The Agency Secretary of the California Labor and Workforce Development Agency proposes to adopt a regulation establishing the agency's Conflict of Interest Code, as required by Government Code section 87300. The regulations herein include Disclosure Categories and listing of Designated Positions, both in the Appendix to the Conflict of Interest Code. The Code is located in section 18730 of the California Code of Regulations.

The authority for this action is Government Code section 87300.

Reference: Government Code sections 87300-87302 and 87306.

OBTAINING COPIES

Copies of the proposed amendment are available to interested persons on request. Copies may be obtained

By writing to:

Robert S. Dresser
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

By telephoning and requesting a copy:
916-327-9064

By visiting in person the offices of the California
Labor and Workforce Development Agency:

Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

SUBMITTING COMMENTS

Any person may submit written comments, including statements, argument, or contentions regarding the proposed amendment. Any timely submitted written comments must be considered by the Agency Secretary before the proposed amendment is finally adopted. Any written comments should be submitted to:

Robert S. Dresser
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Written comments may also be submitted in person by delivering to the Labor and Workforce Development Agency at:

Robert S. Dresser
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

In order for any written comments to be considered by the Agency before it amends the Conflict of Interest Code, they must be actually received in the offices of the Agency by 5:00 p.m., July 7, 2003.

FURTHER INFORMATION

Inquiries concerning the proposed amendment to the Conflict of Interest Code may be made to:

Robert S. Dresser
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814
Telephone: (916) 327-9064

The Agency has prepared a written explanation of these regulations and has available all information upon which the proposed regulations are based.

REQUESTING A PUBLIC HEARING

Any interested person or his or her representative may request that the Agency hold a public hearing on

the proposed addition to the Conflict of Interest Code, by submitting a written request to the Agency by mail at:

Robert S. Dresser
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

or in person at:

Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

A request for a public hearing must be actually received in the offices of the Agency by 5:00 p.m., June 21, 2003.

FINDINGS

The adoption of the proposed Conflict of Interest Code will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The adoption will not result in any non-discretionary cost or savings to local agencies. The adoption will not result in any cost or savings in federal funding to the state. The adoption will not impose a mandate on local agencies or school districts. The adoption will not have any potential cost impact on private persons or businesses including small businesses.

The Agency must determine that no alternative considered by the Agency would be more effective in carrying out the purpose for which the regulations are proposed or would be more effective and less burdensome to affected private persons than the proposed regulations.

SUMMARY OF AFFECTED PROVISIONS PROPOSED REGULATIONS

These regulations are required because of the establishment of the California Labor and Workforce Development Agency effective July 1, 2002. The Appendix, which lists disclosure categories and designates employees, is established based on the guidelines of the Fair Political Practices Commission. There are two Disclosure Categories that are directly related to the function performed by the employees of the Agency who are required to report, and the possible source of conflict of interest.

Category 1, the category of broadest disclosure, requires disclosure of all interests in real property in the State or California, as well as investments and business positions in, and income, including gifts, loans and travel from any source.

Category 2 requires disclosure investments and business positions in, and income, including gifts, loans and travel from any source.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period.**

Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person by **5:00 p.m. on July 7, 2003.**

Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 407 of the Food and Agricultural Code and Sections 11400.20 and 11445.10 of the Government Code, the Department is implementing, interpreting and making specific sections 9641.5, 10341, 10342, 10610, 10721, 16101, 16151, 16152, 16153, and 16154, Food and Agricultural Code; Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5, Food and Agricultural Code; Chapter 8 (commencing with section 24000), Division 11, Food and Agricultural Code; Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15, Food and Agricultural Code; Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15, Food and Agricultural Code; Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Government Code sections 11445.10 through 11445.60 specify the informal hearing procedures conducted by an agency.

Food and Agricultural Code sections 9562 and 9570 authorize the State Veterinarian to quarantine animals or animal products if there is any serious threat to public health and safety, or the safety of the state's food supply. Sections 1301.2 and 1301.3 of Title 3 of the California Code of Regulations specify the informal hearing procedures for a person to contest a quarantine order. However, for violations that do not result in an immediate quarantine order, the Department would serve a notice of adverse determination against an individual. No regulations currently exist for persons to contest such adverse determinations to the Department in an expedient manner through an informal hearing process.

This proposal adds new Chapter 9, Article 1, and sections 1310, 1310.1, 1310.2 and 1310.3 to the regulations to establish informal hearing procedures for matters that do not involve the quarantine of animals or animal products. This proposal allows persons immediate access to an internal, informal hearing process, and provides the opportunity for a person to present and rebut evidence in a timely manner pursuant to Government Code section 11445.10, et seq.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department has made an initial determination that the proposed regulatory action would not have any significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states as this proposal relates to the internal hearing procedures of the Department. It allows businesses and individuals to have immediate access to the Department's internal hearing process to adjudicate matters expediently and in a less costly manner to all interested parties.

Impact on Jobs/New Businesses: The Department has made an initial determination that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Department has made an initial determination that the proposed regulations will not affect small businesses. The proposal establishes an informal hearing procedure for businesses or individuals to contest an adverse determination issued by the Department in an expeditious manner.

CONSIDERATION OF ALTERNATIVES

The Department of Food and Agriculture must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing (if a hearing is requested from the public), or during the public comment period.

INITIAL STATEMENT OF REASONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing (if a hearing is requested) or during the public comment period upon request from the Department of Food and Agriculture, 1220 N Street, Room A-114, Sacramento, CA 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

Any person may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquires concerning the substance of the proposed regulations is to be addressed to the following:

Name: Thami Rodgers, Associate Analyst
Address: Department of Food and Agriculture
Animal Health and Food Safety Services
1220 N Street, Room A-114
Sacramento, CA 95814
Telephone No.: (916) 698-3276
Fax No.: (916) 653-4249
E-mail address: trodgers@cdfa.ca.gov

The backup contact person is:

Name: Nancy Grillo, Associate Analyst
Address: Department of Food and Agriculture
Animal Health and Food Safety Services
1220 N Street, Room A-114
Sacramento, CA 95814
Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: ngrillo@cdfa.ca.gov

Written comments, facsimiles or e-mails regarding this proposal are to be addressed to the following:

Name: Thami Rodgers, Associate Analyst
Address: Department of Food and Agriculture
Animal Health and Food Safety Services
1220 N Street, Room A-114
Sacramento, CA 95814
Telephone No.: (916) 698-3276
Fax No.: (916) 653-4249
E-mail address: trodgers@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found at <http://www.cdfa.ca.gov>

TITLE 4. GAMBLING CONTROL COMMISSION

NOTICE OF PROPOSED RULEMAKING

“Gambling Equipment Manufacturers or Distributors”

The California Gambling Control Commission (“Commission”) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to adopt Sections 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, and 12310 of Title 4 of the California Code of Regulations, concerning gambling equipment manufacturers or distributors.

PUBLIC HEARING

The Commission will hold a public hearing starting at 11:00 a.m. on Wednesday, July 9, 2003, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833-4231. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period. To be considered for summary and response, all written comments must be received no later than 5:00 p.m., Wednesday, July 9, 2003 (the day of the public hearing).

Written comments for the Commission's consideration should be directed to:

Herb Bolz, Senior Legal Counsel and Regulations Coordinator, California Gambling Control Commission, 2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231; Telephone: 916-263-00490, E-mail: hbolz@cgcc.ca.gov, FAX 916-263-0452.

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided by various provisions of the Gambling Control Act, which may be found in Business and Professions ("B & P") Code sections 19800-19980. In particular, B & P Code sections 19801(g), 19823, 19824, 19827(a)(1), 19840, 19841(r), and 19864. Authority is also provided by Government Code section 15376 and Penal Code section 337j.

The reference citations are as follows: the proposed regulations implement, interpret, or make specific B & P Code sections 19805(b), 19841(r), 19930(c), 19951(a); Code of Civil Procedure section 2015.5; Government Code sections 15375 and 15376; Penal Code section 337j(e)(1); Chapter 24 (commencing with section 1171) of Title 15 of the United States Code; and Title 25 of the United States Code, section 2710.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing law (the Gambling Control Act) mandates the Commission to adopt regulations concerning the licensing of manufacturers and distributors of

gambling equipment. While there are criminal penalties for unlawful manufacture and possession of slot machines, prior to the effective date of the emergency regulations on this topic (October 2002), there was no system for monitoring or oversight of slot machine trafficking in this state, other than transport notices required pursuant to the Tribal-State Gaming Compacts.

The proposed regulation creates a registration system for manufacturers or distributors of slot machines, requires periodic reports concerning among other things transactions involving slot machines and essential parts thereof, addresses related issues, and defines key terms.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: These regulations do not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: Except as noted below, these regulations will not result in significant costs or savings to any state agency, in any cost to any agency or school district, or in any nondiscretionary cost or savings to any local agency. Any costs associated with workload at the California Gambling Control Commission will be offset by revenue generated by fees.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: The cost impact of the proposed regulations is not expected to be significantly adverse. A representative private person or business who is in the business of manufacturing or distributing slot machines, who either (1) has a place of business in California or (2) deals with parties other than tribal gaming facilities would pay an annual registration fee of \$500; however, persons dealing solely in antique slot machine would pay a \$40 annual fee. Persons with no in-state place of business and whose business is limited to tribal gaming facilities would pay no annual registration fee.

Impact on Business: The Commission has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The Commission has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: The Commission has made an initial determination that the effect these regulations will have on small business will be minor. Some small manufacturing or distributing businesses will be required to pay a registration fee and submit quarterly reports to the Commission.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The purpose of the proposed regulations is to specify how a slot machine or device manufacturer can register with the State, and how to file reports concerning machines shipped from or to a location in the State of California. Requiring the filing of reports listing serial numbers will make it more difficult and risky to traffic in illegal slot machines. Moreover, the Commission has been unable to identify any alternative to the proposed regulation that achieves the objective. The Commission invites interested persons to present statements or arguments regarding alternatives to the proposed regulation at the public hearing or during the written comment period.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The Commission has made an assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Herb Bolz, Senior Legal Counsel and Regulations Coordinator, California Gambling Control Commission, 2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231; Telephone: 916-263-0490, E-mail: hbolz@cgcc.ca.gov, FAX 916-263-0452.

Requests for a copy of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other technical information upon which the rulemaking is based should be directed to:

Herb Bolz, Senior Legal Counsel and Regulations Coordinator, California Gambling Control Commission, 2399 Gateway Oaks Drive, Suite 100 Sacramento, CA 95833-4231; Telephone: 916-263-00490, E-mail: hbolz@cgcc.ca.gov, FAX 916-263-0452.

Or:

Susie Hernandez, Regulations Analyst, Telephone: (916) 274-0688, FAX number: (916) 263-0499, e-mail shernandez@cgcc.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Coordinator at the address or telephone number listed above or accessing the Commission's website at <http://www.cgcc.ca.gov>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Regulations Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the Commission may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of the Regulations Coordinator at the address indicated above. The Commission will accept written comments on the modified regulation for 15 days after the date on which it is made available.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

CLAIM FORM AND NOTICE OF POTENTIAL ELIGIBILITY; NOTICE TO NEW EMPLOYEES POSTER; AND WRITTEN NOTICE TO NEW EMPLOYEES

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code §§ 133, 138.4, 3550, 3551, 3600, 5307.3

and 5401, proposes the following regulatory changes to Chapter 4.5, Subchapter 1, Title 8, California Code of Regulations:

Amend Section 9810	General Provisions
Amend Section 9880	Written Notice to New Employees
Amend Section 9881	Posting of Notice to Employees
Propose Section 9881.1	Notice to Employees Poster
Repeal Section 9882	Written Notice to Injured Employees; Pamphlet Contents
Amend Section 9883	Publication of Information, Approval, Spanish Translation
Repeal Section 10117	Claim Form
Propose Section 10117.1	Claim Form and Notice of Potential Eligibility for Benefits
Repeal Section 10118	Form
Propose Section 10118.1	Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

These regulations concern the employee claim form for workers' compensation benefits (DWC 1) and the notice of potential eligibility for benefits, the notice to employees poster, and the written notice to new employees.

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: July 15, 2003
 Time: 10:00 a.m. to 5:00 p.m. or conclusion of business.
 Place: Gov. Hiram W. Johnson State Office Bldg. Auditorium
 455 Golden Gate Avenue
 San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California

Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on July 15, 2003**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes
 Regulations Coordinator
 Department of Industrial Relations
 Division of Workers' Compensation
 Post Office Box 420603
 San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on July 15, 2003.

AUTHORITY AND REFERENCE

Labor Codes §§ 133 and 5307.3 authorize the Administrative Director to adopt or amend regulations and to enforce the laws. Labor Code § 138.4 no longer requires a pamphlet approved by the Administrative Director to be provided to an injured worker with the first notice of payment or notice of delay. Labor Code §§ 3550, 3551 and 3600 authorize the Administrative Director to prescribe the form and content of the Notice to New Employees poster and the content of the written notice to new employees. Labor Code § 5401 authorizes the Administrative Director to

prescribe the form and content of the notice of potential eligibility and claim form. The regulations are intended to implement, interpret or make specific Labor Code §§ 138.4, 3550, 3551 and 5401.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes new regulations and proposes to amend existing regulations concerning concern the employee claim form for workers' compensation benefits (DWC 1) and the notice of potential eligibility for benefits, the notice to employees poster, and the written notice to new employees. The Administrative Director proposes to repeal the regulation which required a pamphlet to be sent to injured employees. The Administrative Director also proposes to repeal the regulations concerning the current claim form (DWC 1).

The Administrative Director of the Division of Workers' Compensation proposes the following new, amended, or repealed regulations:

Amended Section 9810	General Provisions
Amended Section 9880	Written Notice to New Employees
Amended Section 9881	Posting of Notice to Employees
Proposed Section 9881.1	Notice to Employees Poster
Repealed Section 9882	Written Notice to Injured Employees; Pamphlet Contents
Amended Section 9883	Publication of Information, Approval, Spanish Translation
Repealed Section 10117	Claim Form
Proposed Section 10117.1	Claim Form and Notice of Potential Eligibility for Benefits
Repealed Section 10118	Form
Proposed Section 10118.1	Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

Amended § 9810 General Provisions

Labor Code § 138.4 was amended effective January 1, 2003. As a result, the Labor Code no longer requires a pamphlet to be sent to the injured employee, included with the first notice of payment or notice of delay in payment. Section 9810 is amended by deleting subdivision (d), which referenced the general benefits information pamphlet that was previously required by Labor Code § 138.4.

Amended § 9880 Written Notice to New Employees

Labor Code § 3551 was amended effective January 1, 2003. In compliance with the changes to Labor Code § 3551, Section 9880 is amended to require the written notice to new employees to be easily understandable and to be provided in English and Spanish. The notice is required to include information concerning: how to obtain appropriate medical care for a job injury; the role and function of the primary treating physician; how to get emergency medical treatment; the kinds of events, injuries and illnesses covered by workers' compensation; the injured employee's right to receive medical care; information about who the employer's workers' compensation insurance carrier is, or if the employer is self insured, a statement of permissible self-insurance; time limits imposed on the employee; and the location and telephone number of the nearest information and assistance officer. The notice must also include a form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician."

Amended § 9881 Posting of Notice to Employees

Effective January 1, 2003, Labor Code § 3550 was amended. Former Labor Code § 3550 required employers to post a notice providing information to its employees about workers' compensation. Amended Labor Code § 3550 requires additional information to be posted and mandates that the Administrative Director make available the form and content of the notice required to be posted. The proposed amended § 9881 reflects the additional required information as mandated by Labor Code § 3550. The amended § 9881 also provides that the employer may post the Administrative Director's approved notice to employees poster provided in Section 9881.1. If the employer chooses not to use the notice to employees poster provided in Section 9881.1, the employer may use a poster which meets the posting requirements of Labor Code § 3550 and this regulation, provided it has been approved by the Administrative Director.

Proposed § 9881.1 Notice to Employees Poster

Proposed Section 9881.1 is the Notice to Employees poster that is approved by the Administrative Director and may be used by employers. Pursuant to the requirements of Labor Code § 3550, which was amended effective January 1, 2003, the poster is available in both English and Spanish, is easily understandable, sets forth the types of benefits to which an injured worker may be entitled, provides information regarding obtaining emergency medical treatment, explains the rights of the employee to select and change the treating physician, provides informa-

tion concerning obtaining medical care, provides information regarding the existence of time limits for the employer to be notified of an occupational injury, sets forth the protections against discrimination and sets forth the location and telephone number of the nearest information and assistance officer.

Repealed § 9882 Written Notice to Injured Employees; Pamphlet Contents

Labor Code § 138.4 was amended effective January 1, 2003. As a result, the Labor Code no longer requires a pamphlet to be sent to the injured employee, included with the first notice of payment or notice of delay in payment. Therefore, § 9882, which set forth the information that was required to be in the pamphlet, will be repealed.

Amended § 9883 Publication of Information, Approval, Spanish Translation

Section 9883 is amended to delete the reference to the § 9882 pamphlet for injured workers, as the requirement for the employer to send a pamphlet to an injured employee (included with the first notice of payment or notice of delay in payment) was repealed pursuant to the January 1, 2003 revision of Labor Code § 138.4. Pursuant to the January 1, 2003 amendments to Labor Code § 3550 and 3551, the specific requirement that the notice to employees poster and written notice to new employees shall be available in English and Spanish is now set forth in this regulation.

Repealed § 10117 Claim Form

Section 10117, which referred to the Employee's Claim Form (DWC 1) set forth in § 10118, is repealed as § 10118 no longer complies with the requirements set forth in Labor Code § 5401. The claim form has been revised and will be Section 10118.1. Former § 10117 will be repealed, however § 10117.1 will serve as its replacement.

Proposed § 10117.1 Claim Form and Notice of Potential Eligibility for Benefits

Proposed § 10117.1 will replace repealed § 10117. Section 10117.1 provides that § 10118.1 is the mandatory workers' compensation claim form and notice of potential eligibility for benefits. Proposed §§ 10117.1 and 10118.1 reflect the requirements of Labor Code § 5401, which was amended effective January 1, 2003. Section 10117.1 also allows the employer to include other information pertinent to the claim and to include a logo or other employer-identifying information.

Repealed § 10118 Form

Section 10118, the employee's claim form for workers' compensation benefits (DWC 1), no longer complies with the requirements set forth in Labor Code § 5401, which was amended effective January 1, 2003. The claim form has been revised and will be Section 10118.1.

Proposed § 10118.1 Workers' Compensation Claim Form (DWC 1) and Notice of Potential Eligibility

Labor Code § 5401, which was amended effective January 1, 2003, sets forth the requirements pertaining to the notice of potential eligibility and claim form, which shall be a single document. The form and content is required to be prescribed by the Administrative Director after consultation with the Commission on Health and Safety and Workers' Compensation. The notice is easily understandable and available in both English and Spanish. Proposed § 10118 complies with the requirements mandated by Labor Code § 5401. It includes the following information: how to file a workers' compensation claim, a description of the different types of workers' compensation benefits, what happens to the claim form after it is filed, from whom the employee can obtain medical care for the injury, the role and function of the primary treating physician, the right of an employee to select and change the treating physician, how to obtain medical care, the protections against discrimination, and the three required statements concerning the right to disagree with decisions affecting the claim, information about information and assistance officers, and information about consulting an attorney. The notice of potential eligibility is two pages. The claim form consists of an original and three copies. Changing the claim form from a multi-colored, multi-paged form to a form that consists of an original and three copies will allow the claim form to be downloaded and printed from the Department of Industrial Relations, Division of Workers' Compensation web site.

STATE REIMBURSABLE MANDATE

The Administrative Director of the Division of Workers' Compensation has determined that the proposed amendments to the regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. (*County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987)). The requirements imposed on all employers by these

proposed amendments to the regulations, although not a benefit level increase, is similarly not a new State mandate because the amended regulations apply to all employers, private and public, and not uniquely to local governments.

DETERMINATION OF DISCRETIONARY COSTS ON LOCAL AGENCIES

The proposed regulations may impose discretionary costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer comply with the requirements of California's workers' compensation laws is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement for employers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, public and private. The proposed regulations may impose minimal costs on State agencies that are employers. These costs stem from the need to update the notice to employees posters (which will be provided by the Division of Workers' Compensation and available on its website) and to update and provide written notices to new employees. (The written notice to new employees' pamphlet will be obtainable from workers' compensation groups.) Additionally, there may be a minimal cost to the Division of Workers' Compensation caused by printing and providing the notice to employees poster to employers. However, the poster (and the claim form) will also be posted on the Division's website and downloadable.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed amendment to regulations will not affect any federal funding.

DETERMINATION REGARDING SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Administrative Director has made an initial determination that the proposed regulations will not

have an adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR DIRECTLY AFFECTED BUSINESSES

The agency has determined that there may be minimal cost impacts on representative private person or directly affected business. The proposed amended regulations revise the form and content of information which employers must already provide to employees under Labor Code §§ 138.4, 3550, 3551 and 5401. The potential minimal costs stem from the need to update the notice to employees posters (which will be provided by the Division of Workers' Compensation and available on its website) and the need to provide written notices to new employees. (The written notice to new employees' pamphlet will be obtainable from workers' compensation groups.) There should be no additional costs incurred as a result of the changes to the claim form. The form will still be available from the WCAB and will be downloadable from the Division's website. The entities directly affected by the regulations which require changes in the claim form, the notice to new employees and the poster are those which administer workers' compensation claims in California. This includes three types of private businesses: (1) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations may result in a minimal adverse economic impact on small businesses. The proposed regulations revise the form and content of information which employers must already provide to employees under Labor Code §§ 138.4, 3550, 3551 and 5401. The potential minimal costs stem from the need to update the notice to employees posters (which will be provided by the Division of Workers' Compensation and available on its website) and the need to provide written notices to new employees. (The written notice to new employees' pamphlet will be obtainable from workers' compensation groups.) There should be no additional costs incurred as a result of the changes to the claim form. The form will still be available from the WCAB and will be downloadable from the Division's website.

**ASSESSMENT OF EFFECTS ON JOB
AND/OR BUSINESS CREATION,
ELIMINATION OR EXPANSION**

The Administrative Director has determined the proposed amendment to regulations will have no effect on the creation or elimination of jobs or existing businesses within California, or effect the expansion of current California businesses.

IMPACT ON HOUSING COSTS

The proposed amendment to regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

As required by Labor Code §§ 3550, 3551 and 5401, the Administrative Director has consulted with the Commission on Health and Safety and Workers' Compensation (CHSWC) with regard to the form and contents of the notice to new employees poster, written notice to new employees, claim form (DWC 1) and notice for potential eligibility. Many of the recommendations made by CHSWC have been incorporated into the proposed regulations. Due to space considerations, some of CHSWC's recommendations were not included. Additionally, although CHSWC proposed a pamphlet which would comply with Labor Code § 3551's requirements for a written notice to new employees, members of the regulated public objected that the pamphlet was too long and contained information that was unnecessary for most minor workers' compensation injuries.

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Administrative Director invites interested persons to present statement or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

**AVAILABILITY OF INITIAL STATEMENT OF
REASONS, TEXT OF PROPOSED
REGULATIONS, RULEMAKING FILE AND
DOCUMENTS SUPPORTING THE
RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations in strikeout/underline format, and the Form 399. The documents in the pre-notice rulemaking file include the November 7, 2002 CHSWC consultation on the DWC draft Claim Form Notice; the November 12, 2002 CHSWC consultation on the DWC Proposed Poster; the December 12, 2002 CHSWC consultation on New Employee Notice per Labor Code § 3551(a); Advisory Committee Meeting sign-in sheets; and written pre-notice comments to the proposed regulations that were posted on the Division's website.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department's website at www.dir.ca.gov.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

**BACKUP CONTACT/PERSON CONTACT
PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Destie Overpeck
Industrial Relations Counsel
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (415) 703-4600.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list, and to all persons who have requested notice of the hearing as required by Labor Code § 5307.4.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Sections 9810, 9880, 9881, 9881.1, 9882 (repealed), 9883, 10117 (repealed), 10117.1, 10118 (repealed), and 10118.1.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Proposed
Amendments to Regulations:
Workers' Compensation—Audit Regulations

TITLE 8, CALIFORNIA CODE OF REGULATIONS

SECTIONS 10104, 10107.1, and 10111.2

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 59, 129, 129.5, 133 and 5307.3, proposes to adopt the amended and proposed regula-

tions described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt:

Amended section 10104

Annual Report of Inventory

Amended section 10107.1

Notice of Audit; Claim File Selection; Production of Claims Files; Auditing Procedure

Amended section 10111.2

Full Compliance Audit Penalty Schedule; Target Audit Penalty Schedule

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: July 15, 2003

Time: 10:00 am to 5:00 PM or conclusion of business

Place: Gov. Hiram W. Johnson State Office Building,
Auditorium

455 Golden Gate Avenue

San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation.

tion. The written comment period closes at **5:00 p.m., on July 15, 2003**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on July 15, 2003.

AUTHORITY AND REFERENCE

Labor Codes sections 59, 133 and 5307.3 authorize the Administrative Director to adopt or amend regulations and to enforce the laws. Labor Code sections 129 and 129.5 authorize the Administrative Director to audit and impose penalties against claims administrators who fail to meet their obligations to promptly and accurately provide injured workers with the compensation to which they are entitled. The proposed regulations will further implement, interpret or make specific Labor Code sections 129 and 129.5.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes the following amended regulations concerning the audit of workers' compensation claims.

Amended section 10104

Annual Report of Inventory

This regulation currently provides that the Self-Insurer's Annual Report may be substituted for the Annual Report of Inventory. However, the Self-Insurer's Annual Report does not set forth the number of indemnity claims (as defined as claims in which indemnity has been paid), medical only files or denial files. Therefore, if a Self-Insurer substitutes the Self-Insurer Annual Report for the Annual Report of Inventory, the audit unit is unable to determine the sample size of files to be audited, is unable to plan and

schedule the audits in advance, and is not provided with the information necessary to determine the size of the adjusting location. Therefore, Section 10104 will be amended to delete the statement that the Self-Insurer's Annual Report could be substituted for the Annual Report of Inventory.

Amended section 10107.1

Notice of Audit; Claim File Selection;

Production of Claims Files; Auditing Procedure

This section describes the process for conducting audits on or after January 1, 2003, in order to comply with the legislative changes made to Labor Code sections 129 and 129.5 effective January 1, 2003. It sets forth the procedure for noticing an audit and the sampling methodology for selecting the claims that will be audited. The section sets forth the procedure for calculating the audit subject's profile audit review performance rating. The section provides the method to determine the profile audit review performance rating of each audit and to establish a profile review audit performance standard each year. Those who meet or exceed the performance standard will not be assessed any administrative penalties; however, they will be issued Notices of Compensation Due pursuant to section 10110.

This section also provides the procedure for conducting Full Compliance Audits and the sampling methodology for selecting the claims that will be audited. The section sets forth the procedure for calculating the audit subject's full compliance audit performance rating and determining the full compliance audit performance standard each year.

The proposed revision to this section is to subdivision (c)(A)(v). This subdivision is the fifth factor in the procedure for calculating the audit subject's profile review performance rating and full compliance audit performance rating. The proposal is to delete the qualifying phrase "once the employees' injuries have reached a permanent and stationary status" as the language is unnecessary and may be confusing, since the notice advising injured employees of the process for selecting Agreed Medical Examiners and/or Qualified Medical Examiners is due with the denial of permanent disability and indemnity.

Amended section 10111.2

Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule

Section 10111.2 sets forth the audit penalty schedules in compliance with the requirements of Labor Code section 129.5. This section applies to audits conducted on or after January 1, 2003. However, for violations in claims with dates of injury between January 1, 1990 and December 31, 1993, penalty amounts may not exceed the amounts that would be assessed pursuant to section 10111. For violations in

claims with dates of injuries between January 1, 1994 and December 31, 2002, penalty amounts may not exceed the amounts that would be assessed pursuant to section 10111.1. The penalty amounts in proposed section 10111.2 are based on the type of violation, taking into consideration the lateness of an act or the monetary value of the failure to act.

Section 10111.2 will be amended to include a \$50 penalty for late paid self-imposed increased (which was due on the same date as the late paid indemnity payment); to delete the penalty reference to self-imposed increases from subsection (a)(8); to include a penalty for late subsequent indemnity payment; and to include a penalty for failure to comply with an award of the WCAB or Rehabilitation Unit which is not assessed pursuant to subdivision (a)(10).

LOCAL MANDATE DETERMINATION / REIMBURSABLE COSTS FOR LOCAL AGENCIES OR SCHOOL DISTRICTS

The Administrative Director has determined that the proposed regulations will not impose any new mandated program on local agencies and school districts. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The requirements imposed on all employers by these proposed regulations, although not a benefit level increase, similarly do not constitute a new State mandate because the regulations apply to all employers, private and public, and not uniquely to local governments.

In addition, there are no costs to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

DETERMINATION OF NONDISCRETIONARY COSTS OR SAVINGS ON LOCAL AGENCIES

The proposed regulations may impose nondiscretionary costs on local agencies because the requirement that every employer comply with the requirements of California's workers' compensation laws is a statutory obligation. However, any such costs are non-reimbursable because the requirement for employers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs

are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, public and private. However, pursuant to the regulations, there are no penalties for audit subjects that meet or exceed the profile audit review performance standards.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Administrative Director has made an initial determination that the amended regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Administrative Director has determined that the amended regulations will not have cost impacts on representative private persons or businesses.

The entities directly affected by the regulations which allow for increase audit penalties are those which administer workers' compensation claims in California. This includes three types of private businesses: (1) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that small business will not be impacted by the amended regulations. The businesses that are subject to audit penalties for failure to comply with the workers' compensation regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as "small business."

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Administrative Director has determined that the proposed regulations will likely have no net effect on

the creation or elimination of existing jobs or businesses within California, or affect the expansion of current California businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Administrative Director invites interested persons to present statement or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations in ~~strikeout~~ underline format, and the Form 399.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACKUP CONTACT/PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Department of Industrial Relations
Destie Overpeck
Industrial Relations Counsel
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (415) 703-4600.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Sections 10104, 10107.1, and 10111.2.

TITLE 15. BOARD OF PRISON TERMS

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE OF THE BOARD OF PRISON TERMS

NOTICE IS HEREBY GIVEN that the Board of Prison Terms, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendments to its Conflict of Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Board of Prison Terms proposes to amend its Conflict of Interest Code to include an employee position that involves the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

The proposed amendments delete a designated employee position that no longer exists at the Board of Prison Terms and adds language to the disclosure categories which clarifies the definition of "income" to include gifts, loans and travel payments.

Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than July 7, 2003, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than June 22, 2003, by contacting the Contact Person set forth below. If a public hearing is requested, it will be held on June 24, 2003 at the Board of Prison Terms' headquarters located at 1515 K Street, 5th Floor Board Room, Sacramento, California.

The Board of Prison Terms has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Board of Prison Terms has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.

3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the Board of Prison Terms must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

CONTACT PERSON

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Tina Dunlap
Board of Prison Terms
1515 K Street, Suite 600
Sacramento, CA 95814
(916) 322-6729

When requesting information please reference the proposed amendment as RN 03-03.

TITLE 16. DENTAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements of arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Embassy Suites Hotel, 150 Anza Boulevard, Burlingame, California 94010. The telephone number is (650) 342-4600. The hearing will be held at 1:30 p.m., July 11, 2003.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California at its office not later than 5:00 p.m. on July 7, 2003, or must be received by the Dental Board of California at the hearing. The Dental Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person

designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 1614 of the Business and Professions Code, and to implement, interpret or make specific Section 1751 of said Code; the Dental Board of California is considering changes to Division 10, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend 16 California Code of Regulations, Section 1085

In addition to editorial changes for clarity, the proposed changes would allow unlicensed dental assistants to operate intra-oral photography or other imaging equipment.

The proposed changes recognize that two duties do not require the supervising dentist to check and approve the procedure prior to dismissal of the patient, unlike other allowable duties.

The proposed changes would allow an RDHEF or RDHAP, in addition to the current regulatory language allowing a dentist or RDH, to scale and polish prior to the dental assistant's application of topical fluoride, since RDHEFs and RDHAPs are obviously as qualified to do so as an RDH since they have completed more training than an RDH.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17651 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Dental Board of California has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Dental Board of California is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Dental Board of California has determined that the proposed regulation does not effect small businesses. These proposals simply expand the duties that a dental assistant is allowed to perform and change the supervision levels under which allowable duties can be legally performed.

CONSIDERATION OF ALTERNATIVES

The Dental Board of California must determine that no reasonable alternative which is considered or that has otherwise been identified and bought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Dental Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California, 1432 Howe Avenue, Suite 85, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Linda M. Madden
Address: 1432 Howe Avenue, Suite 85
Sacramento, California 95825
Telephone: (916) 263-2300
Fax Number: (916) 263-2410
E-Mail Address: linda_madden@dca.ca.gov

The back-up contact person is:

Name: Karen Wyant
Address: 1428 Howe Avenue, Suite 58
Sacramento, California 95825
E-Mail Address: karen_wyant@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Linda Madden (916) 263-2300, ext. 2327.

Website Access Materials regarding this proposal can be found at www.dbc.ca.gov

**TITLE 16. DENTAL BOARD
OF CALIFORNIA**

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements of arguments orally or in writing relevant to the action proposed at a hearing to be held at the the **Embassy Suites Hotel, 150 Anza Boulevard, Burlingame, California 94010. The telephone number is (650) 342-4600. The hearing will be held at 1:30 p.m., on July 11, 2003.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California at its office not later than 5:00 p.m. on July 7, 2003, or must be received by the Dental Board of California at the hearing. The Dental Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 1763(c) of the Business and Professions Code, and to

implement, interpret or make specific Section 1763 of said Code; the Dental Board of California is considering changes to Division 10, Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Adopt California Code of Regulations Article 4.5,
Section 1042-1042.6

Existing law (AB982), Chap. 1131, Statutes of 2002) among other things creates the California Dental Corp Loan Repayment Program. This new program encourages recently licensed dentists who are linguistically and culturally competent to practice in underserved locations in California. In exchange for them practicing in these areas, the program authorizes that the Board may award up to \$105,000 for repayment of educational loans. The dentist would have to commit to a three-year service contract. The board is responsible for implementing this program.

Sections of the Proposed Regulations

1042—This section defines certain terms as they relate to this program.

1042.1—This section outlines the guidelines for the selection of applicants. In addition to possessing a current valid license to practice dentistry in this state, applicants must meet specified criteria. The criteria and a grading point system is spelled out, including, among other criteria, allowing an applicant one point each, if he or she speaks more than one Medi-Cal threshold language; has additional experience working in a health field related to dentistry in an underserved area; and is not participating in any other educational loan repayment program. The points will help the selection committee get a better sense of the qualifications of the applicants, but the number of points that an applicant receives is not the determinative factor in selecting dentists to participate in this program. The Board shall consider giving priority consideration to those applicants who are best suited to meet the cultural and linguistic needs of patients from dentally underserved areas.

Section 1042.2—This section of proposed language defines the process an applicant must follow to be considered for the program including the submission of an application, which includes: stating which criteria an applicant meets; providing the name of each loan company to which the applicant is repaying a loan; a current loan statement; the outstanding balance and the purpose for which the loan was given.

Section 1042.3—This section of proposed language defines the processing times for applications. There is a proposed 120-day window in which the Board must notify the applicant of its decision on the application.

Section 1042.4—This section of proposed language outlines program implementation and requires a participating dentist to sign a written agreement with the Board agreeing to the terms of the program. In addition, it outlines the repayment terms if the participant receives less than the maximum allowable under the statute.

Other proposed language includes the dentist hold a valid, active, current and unrestricted license for the duration of the program.

Section 1042.5—This section of language proposes, if a dentist participating in the program is unable to complete his or her obligation, the process and penalties for failing to meet his or her agreement with the Board, including a reduction in loan repayment or repayment to the Board of amounts paid out. In addition, it defines the administrative and civil consequences of the inability to complete the obligation.

Section 1042.6—This section of language outlines the program reinstatement requirements necessary for reinstatement to the program.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17651 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Dental Board of California has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Dental Board of California is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Dental Board of California has determined that the proposed regulations would not affect small businesses because the proposed regulation implements a loan repayment program for individuals, not for businesses.

CONSIDERATION OF ALTERNATIVES

The Dental Board of California must determine that no reasonable alternative which is considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Dental Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California, 1432 Howe Avenue, Suite 85, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below [or by accessing the website listed below].

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Linda M. Madden
Address: 1432 Howe Avenue, Suite 85
Sacramento, California 95825
Telephone: (916) 263-2300
Fax Number: (916) 263-2410
E-Mail Address: linda_madden@dca.ca.gov

The back-up contact person is:

Name: Georgetta Coleman-Griffith
 Address: 1432 Howe Avenue, Suite 85
 Sacramento, California 95825
 Telephone: (916) 263-2300
 Fax: (916) 263-2140
 E-Mail Address: georgetta_coleman-griffith@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Linda Madden (916) 263-2300, ext. 2327.

Website Access Materials regarding this proposal can be found at www.dbc.ca.gov

TITLE 16. DENTAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements of arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Embassy Suites Hotel, 150 Anza Boulevard, Burlingame, California 94010. The telephone number is (650) 342-4600. The hearing will be held at 1:30 p.m., on July 11, 2003.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California at its office no later than 5:00 p.m. on July 7, 2003, or must be received by the Dental Board of California at the hearing. The Dental Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 1614 of the Business and Professions Code, and to implement, interpret or make specific Sections 1614 and 1754 of said Code and Section 15376 of the Government Code; the Dental Board of California is considering changes to Division 10, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend 16 California Code of Regulations, Section 1086

Regulation Section 1086 specifies the duties of a Registered Dental Assistant (RDA) and the settings and level of dentist supervision required when performing such duties.

The proposed changes would allow the RDA to continue to perform the duties as are currently performed, and allow the addition of many new duties. The proposed changes would also allow the degree of supervision to be determined by the dentist, commensurate with the RDA's knowledge, skills, and abilities. The proposed changes would also allow a Registered Dental Hygienist in Extended Functions (RDHEF), or a Registered Dental Hygienist in Alternative Practice (RDHAP)(in addition to the current regulatory language allowing a dentist or RDH) to determine that the teeth to be coronally polished are free of calculus or other extraneous material prior to coronal polishing, since RDHEFs and RDHAPs are by law allowed to perform all of the duties that an RDH is allowed to perform, and as therefore as qualified as an RDH to make such a determination.

Add California Code of Regulation Section 1086.1

The proposed adoption of Section 1086.1 would allow an RDA to be employed or supervised by an RDHAP if limited to duties falling within the scope of practice of both the RDA and RDHAP.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17651 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Dental Board of California has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Dental Board of California is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Dental Board of California has determined that the proposed regulations would not affect small businesses. The language simply expands the duties that an RDA can perform and changes the levels of supervision under which allowable duties can be legally performed.

CONSIDERATION OF ALTERNATIVES

The Dental Board of California must determine that no reasonable alternative which is considered or that has otherwise been identified and bought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Dental Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California, 1432 Howe Avenue, Suite 85, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below [or by accessing the website listed below].

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Linda M. Madden
Address: 1432 Howe Avenue, Suite 85
Sacramento, California 95825
Telephone: (916) 263-2300
Fax Number: (916) 263-2410
E-Mail Address: linda_madden@dca.ca.gov
The back-up contact person is:

Name: Karen Wyant
Address: 1428 Howe Avenue, Suite 58
Sacramento, California 95825
Telephone: (916) 263-2595
E-Mail Address: karen_wyant@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Linda Madden (916) 263-2300, ext. 2327.

Website Access Materials regarding this proposal can be found at www.dbc.ca.gov

TITLE 16. DENTAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements of arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Embassy Suites Hotel, 150 Anza Boulevard, Burlingame, California 94010. The telephone number is (650) 342-4600. The hearing will be held at 1:30 p.m., on July 10, 2003.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California at its office no later than 5:00 p.m. on July 7, 2003, or must be received by the Dental Board of California at the hearing. The Dental Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 1614, 1757, and 1769 of the Business and Professions Code, and to implement, interpret or make specific Sections

1757 and 1769 of said Code; the Dental Board of California is considering changes to Division 10, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Amend 16 California Code of Regulations
Sections 1087 and 1089

Regulation Sections 1087 and 1089 define the duties that Registered Dental Assistants in Extended Functions (RDAEFs) and Registered Dental Hygienists in Extended Functions (RDHEFs) are allowed to perform, and the settings and level of dentist supervision required when performing such duties.

The proposed changes would expand the duties that RDAEFs and RDHEFs are allowed to perform. The proposed changes would also allow the degree of supervision to be determined by the dentist, commensurate with the EF's knowledge, skills, and abilities, unless the Board determines that the supervision level should be established by regulation for a particular duty.

Add California Code of Regulations Section 1087.2

The proposed changes would require that each person who holds a license as an RDAEF or RDHEF on the effective date of the regulation change, must provide evidence of having completed a board-approved course or courses, and an examination of five of the new duties prior to their performance, and also as a condition of renewal on or after January 1, 2006.

Add California Code of Regulations
Section 1087.1 and 1089.1

The proposed changes would allow an EF to be employed or supervised by an RDHAP if limited to duties falling within the scope of practice of both the EF and RDHAP.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17651 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Dental Board of California has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: It is estimated that the cost to persons may be \$2,600 to complete the required educational and examination requirements.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Dental Board of California has determined that the proposed regulations would not affect small businesses.

CONSIDERATION OF ALTERNATIVES

No alternatives were considered for this requirement, since education and passage of an examination is essential as a condition of performing the new duties to protect the public, which include the actual placement and finishing of final restorations (cavity fillings).

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Dental Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California, 1432 Howe Avenue, Suite 85, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below [or by accessing the website listed below].

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Linda M. Madden
 Address: 1432 Howe Avenue, Suite 85
 Sacramento, California 95825
 Telephone: (916) 263-2300
 Fax Number: (916) 263-2410
 E-Mail Address: linda_madden@dca.ca.gov

The back-up contact person is:

Name: Karen Wyant
 Address: 1428 Howe Avenue, Suite 58
 Sacramento, California 95825
 E-Mail Address: karen_wyant@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Linda Madden (916) 263-2300, ext. 2327.

Website Access Materials regarding this proposal can be found at www.dbc.ca.gov

TITLE 16. DENTAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements of arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Embassy Suites Hotel, 150 Anza Boulevard, Burlingame, California 94010. The telephone number is (650) 342-4600. The hearing will be held at 1:30 p.m. on July 11, 2003.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California at its office no later than 5:00 p.m. on July 7, 2003, or must be received by the Dental Board of California at the hearing. The Dental Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 1614 of the Business and Professions Code, and to implement, interpret or make specific Sections 1749.1 and 1774 of

said Code; the Dental Board of California is considering changes to Division 10, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend 16 California Code of Regulations, Section 1079.3

To implement Business and Professions Code Section 1774, regulation 1079.3 requires that an applicant for licensure as a Registered Dental Hygienist in Alternative Practice (RDHAP) complete a written examination including, but not limited to, those subjects defined in Section 1073.3.

The proposed change would instead require that the examination be only on California Law and Ethics, as authorized by Business and Professions Code Sections 1749.1 and 1774.

The more comprehensive exam required by current Section 1079.3 is not necessary since the function of an RDHAP is to perform dental hygiene services for which they have already demonstrated competency when they passed the RDH clinical examination.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Cost or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17651 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Dental Board of California has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Dental Board of California is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Dental Board of California has determined that this proposal regulation would not affect small businesses. These regulations simply change the content of the licensing exam for RDHAPs.

CONSIDERATION OF ALTERNATIVES

The Dental Board of California must determine that no reasonable alternative which is considered or that has otherwise been identified and bought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons that the proposed described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Dental Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California, 1432 Howe Avenue, Suite 85, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Linda M. Madden
Address: 1432 Howe Avenue, Suite 85
Sacramento, California 95825
Telephone: (916) 263-2300
Fax Number: (916) 263-2140
E-Mail Address: linda_madden@dca.ca.gov

The back-up contact person is:

Name: Karen Wyant
Address: 1428 Howe Avenue, Suite 58
Sacramento, California 95825
E-Mail Address: karen_wyant@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Linda Madden (916) 263-2300, ext. 2327.

Website Access Materials regarding this proposal can be found at www.dbc.ca.gov

TITLE 16. VETERINARY MEDICAL BOARD

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Veterinary Medical Board, 1424 Howe Avenue, Conference Room F, Sacramento, CA 95825 at 10:00 a.m. on Wednesday, July 9, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on July 7, 2003, or must be received by the board at the hearing.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 4808 and 4848 of the Business and Professions Code, and to implement, interpret or make specific Sections 4841.5, 4842.5 and 4843 of said Code, the board is considering changes to Division 20 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law authorizes the Veterinary Medical Board to approve curriculum in veterinary technology for persons applying to take the Registered Veterinary Technician (RVT) examination. This regulatory proposal will amend those regulations related to the criteria for evaluation of equivalent RVT programs,

subsequent inspections, and placing a school on probation. This regulatory proposal will also adopt regulations to address withdrawal of approval of accreditation, outline procedures for probation or withdrawal of approval, and program director notification requirements.

1. Amend Section 2065. This proposed amendment would require the school to visit and initiate a written agreement with the clinical rotation/externship sites prior to beginning student rotations and externships. The proposed amendment outlines education, teaching experience, and training requirements for program directors, interim program directors, and instructors, and defines the student-to-instructor ratio for lab classes. This amendment would require the school to disclose to the student, prior to enrollment, the school's pass rate for first time candidates and the state average pass rate for first time candidates within the last two years on the RVT exam, along with a description of RVT registration requirements. The amendment would also require the school to provide prospective students with information in writing regarding transferability of units.

2. Amend Section 2065.7. This proposed regulation would explain that if for a period of two years, a school's yearly average pass rate on the RVT exam falls below 10 percentage points of the state average pass rate for first time candidates, the Board may conduct subsequent inspections.

3. Amend Section 2065.8. This proposed amendment would define the circumstances for placing a school on probation, and extends the limit for prescribed probation time to two years. The proposed amendment would require the school to notify current and prospective students and employees of their probationary status in writing.

4. Adopt Section 2065.8.A. This proposed amendment would define the circumstances for withdrawal of approval of accreditation.

5. Adopt Section 2065.8.B. This proposed regulation would outline procedures to place a school on probation or withdraw approval of accreditation.

6. Adopt Section 2065.8.C. This proposed amendment would specify the time frame for notification to the board of program director changes.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have any impact on the creation of jobs or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulations would not affect small businesses.

This regulatory proposal involves clarifying the existing regulations relevant to the approval of schools offering a curriculum for training registered veterinary technicians. The changes mainly include more specific references to criteria for evaluation of RVT programs, inspections, probation and withdrawal of approval, and program director and instructor requirements.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Veterinary Medical Board at 1420 Howe Avenue, Suite 6, Sacramento, CA 95825-3228.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Deanne Pearce
Address: 1420 Howe Avenue, Suite 6
Sacramento, CA 95825-3228
Telephone No.: (916) 263-2610.
Fax No.: (916) 263-2621
E-Mail Address: deanne_pearce@dca.ca.gov

The backup contact person is:

Name: Jennifer Thornberg
Address: 1420 Howe Avenue, Suite 6
Sacramento, CA 95825-3228
Telephone No.: (916) 263-2610.
Fax No.: (916) 263-2621
E-Mail Address: jennifer_thornberg@dca.ca.gov

Website Access:

Materials regarding this proposal can be found at www.vmb.ca.gov.

**TITLE 16. VETERINARY
MEDICAL BOARD**

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereinafter referred to as "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Veterinary Medical Board, 1424 Howe Avenue, Conference Room F, Sacramento, California 95825, at 10:15 a.m., on July 9, 2003. Written comments must be received by the Board at its office not later than 5:00 p.m. on July 7, 2003, or must be received by the Board at the hearing. Written comments may be submitted by mail at the address listed on the last page of this notice, by E-mail at vmb@dca.ca.gov and by fax at (916) 263-2621.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the

exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 4808 of the Business and Professions Code, and to implement, interpret or make specific Sections 4853 and 4854 of said Code, the Board is considering changes to Division 20 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Existing law authorizes the Veterinary Medical Board to amend, adopt, and enforce those laws applicable to the practice of veterinary medicine. This regulatory proposal will amend the regulations relevant to the minimum standards of practice required for veterinarians practicing veterinary medicine within a small animal mobile clinic.

1. Amend section 2030.2. The existing regulations specify the facility requirements for small animal mobile clinics that function as a veterinary premises and provide veterinary services to common domestic household pets. This regulatory proposal amends the regulations by 1) changing the examination room requirement; 2) changing the separate surgery room requirement; and 3) extending the compliance date for facilities required to have a separate surgery room.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: The Board has made an initial determination that the proposed regulatory action would have no effect on housing costs.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed regulations would not affect small businesses.

Existing law requires all small animal mobile clinics to have a separate surgery room to perform aseptic surgery. It also requires that there be a separate examination room. This regulatory proposal clarifies what types of small animal mobile clinics must comply with the separate room requirements. The proposal also gives an extension of time for affected facilities to meet the separate room requirement. This proposal does not create any additional requirements for small animal mobile clinics.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request by contacting Deanne Pearce, (916) 263-2610, at the Veterinary Medical Board, at 1420 Howe Avenue, Suite 6, Sacramento, California 95825-3228.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection at the

address listed above. To inspect the rulemaking file contact the person identified below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be addressed to Deanne Pearce at the above address or at (916) 263-2610

The backup contact person is Jennifer Thornburg (916) 263-2610. The person designated to respond to questions on the substance of the regulatory proposal is Deanne Pearce (916) 263-2610.

BOARD INTERNET WEBSITE

The Board maintains a website at www.vmb.ca.gov where rulemaking file documents may be accessed.

TITLE 18. BOARD OF EQUALIZATION

PUBLIC REVENUE

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to amend Rule 462.040 Change in Ownership—Joint Tenancies and Rule 462.240 The Following Transfers do not Constitute a Change in Ownership. A public hearing on the proposed amendments of the regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on July 9, 2003. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by July 9, 2003.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Rule 462.040 Change in Ownership— Joint Tenancies

The proposed amendments clarify existing statutory provisions governing creation of “original transferor” status by amending the rule language to provide that co-owners may become “original transferors” by transferring to themselves in joint tenancy without requiring a third person among the transferees or by transferring to a trust or will for the benefit of the other joint tenant. Under the amendments, the assessor would have authority (a) to presume that every joint tenant is an “original transferor”, if the assessor has reasonable cause based on specific types of evidence to make such a presumption, and (2) to apply the step transaction doctrine to transfers made for the purpose

of avoiding a change in ownership and not for estate planning purposes. The proposed addition of a subdivision to specify that the rule provisions apply only to transfers between individuals, and not legal entities or commercial transactions, in recognition of the fact and in accord with the Legislature's determination that joint tenancies are estate planning tools. The amendments also add a sentence to clarify that the "original transferor" status terminates upon the termination of the joint tenancy and an example to illustrate the termination of "original transferor" status..

**2. Rule 462.240 The Following Transfers do not
Constitute a Change in Ownership**

The proposed amendment adds a subdivision to apply Probate Code provisions that treat transfers of property upon the death of a registered domestic partner to a surviving domestic partner in the same manner as transfers from a deceased spouse to a surviving spouse.

**COST TO LOCAL AGENCIES AND
SCHOOL DISTRICTS**

The State Board of Equalization has determined that proposed amendments to Rule 462.040 and Rule 462.240 do not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will not result in direct or indirect costs or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5 (a)(8), the Board of Equalization makes an initial determination that the adoption of the proposed amendments to Rule 462.040 and Rule 462.240 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule amendments merely clarify and interpret existing code provisions which generally apply to transfers among individuals in close family and personal relationships.

The proposed rule amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The rule amendments as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule amendments will not affect small business because the amendments interpret and make

specific existing statutory law and do not impose any additional compliance or reporting requirements on taxpayers.

**COST IMPACT ON PRIVATE PERSONS
OR BUSINESSES**

There will be no adverse economic impact on private businesses or persons because the proposed rule amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on private businesses or persons.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rule 462.040 and Rule 462.240 have no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Sections 62 and 65, Revenue and Taxation Code; Sections 37 and 6401, Probate Code .

CONTACT

Questions regarding the substance of the proposed rule should be directed to: Mr. Louis Ambrose, Supervising Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580; FAX (916) 323-3387.

The Board will consider comments on the proposed amendments and the proposed rule if received by July 9, 2003. Written comments for the Board's consideration, notice of intent to present testimony or witnesses, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email Diane.Olson@boe.ca.gov or to Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC: 80, P.O. Box 942879, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule amendments. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) amendments are available on the Internet at the Board's website <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed rule amendments. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule amendments if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the rule amendments. The text of the modified rule amendments will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule amendments will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule amendments for fifteen days after the date on which the modified rule amendments are made available to the public.

TITLE 18. BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate Regulation 1620.1, *Sales of Certain Vehicles & Trailers for Use in Interstate or Out-of-State Commerce*, in Title 18, Division 2, Chapter 4, of the California Code of

Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on July 9, 2003. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by July 9, 2003.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law, Revenue and Taxation Code sections 6388 and 6388.5, provide specific sales and use tax exemptions on the sale, or storage, use or other consumption of certain vehicles and trailers delivered inside this state.

Proposed Regulation 1620.1, *Sales of Certain Vehicles & Trailers for Use in Interstate or Out-of-State Commerce*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 6388 and 6388.5. The regulation is proposed to provide definitions of key terms; addresses the application of tax to sales of certain vehicles and trailers delivered to purchasers in California; provides criteria for properly completing an affidavit; provides guidelines for lessors; and provides record-keeping requirements for purchasers of the vehicles and trailers.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the regulation will result in no direct or indirect cost or savings to any State agency, any costs to local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of Proposed Regulation 1620.1 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed regulation may affect small business.

**COST IMPACT ON PRIVATE PERSON
OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Proposed Regulation 1620.1 has no comparable federal regulations.

AUTHORITY

Section 7051, Revenue and Taxation Code.

REFERENCE

Sections 6388 and 6388.5, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Mariflor Jimenez (916) 324-2952, at 450 N Street, Sacramento, CA 95814, e-mail Mariflor.Jimenez@boe.ca.gov or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail Karen.Anderson@boe.ca.gov or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATION**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street,

Sacramento, California. The notice, initial statement of reason and the text of the proposed regulation are available on the internet at the Board's website <http://www.boe.ca.gov>.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

**TITLE 23. DEPARTMENT OF
WATER RESOURCES**

**NOTICE OF PROPOSED
RULEMAKING ACTION**

The Department of Water Resources (DWR or Department) proposes to adopt as permanent regulations new and amended regulations that establish the procedures for selection of private architects, landscape architectural services, engineers, environmental services, land surveyors and construction project management firms. DWR will consider all comments, objections, and recommendations specifically directed at the proposed action or the procedures followed before DWR adopts the proposed rulemaking action.

NOTICE OF PUBLIC HEARING ¹

Notice is hereby given that a public hearing on the proposed rulemaking action will be held:

¹ If you need reasonable accommodations due to disability, please contact the Equal Opportunity Office at (916) 653-6934 or California Relay Services at 1-800-735-2929 (TTY) or 1-800-735-2929 (Voice) and ask them to contact Devinder Sandhu at (916) 653-4429, sandhu@water.ca.gov.

July 8, 2003—10 AM
Legal Conference Room,
Eleventh Floor, Rm. 1118-30
The Resources Building
1416 Ninth Street
Sacramento, California
(916) 651-9075

At the hearing, any interested person or authorized representative may present oral or written statements, arguments or contentions relevant to the rulemaking action described in the Informative Digest. The Department may impose reasonable limits on oral presentations. Persons making oral presentations at the hearing are asked to provide a written copy of their testimony at the conclusion of their remarks.

Written comments other than those presented at the hearing may be submitted to the Department as given below:

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DWR. The written comment period closes at **5:00 PM on July 7, 2003**. DWR will consider only comments received at the following address by that time. Submit comments to:

Ward Tabor, Assistant Chief Counsel
 Department of Water Resources
 Office of the Chief Counsel, Rm. 1118
 1416 Ninth Street
 Sacramento, CA 95814

Comments that are no more than 10 pages will be accepted by fax at (916) 653-0952. A fax transmission must be completed by the time given above in order to be timely submitted.

Comments may also be submitted electronically to Ward Tabor, Assistant Chief Counsel, at wtabor@water.ca.gov by the deadline given above.

AUTHORITY AND REFERENCE

Authority Citation: The proposed regulations and the proposed amended regulations are authorized by Government Code section 4526.

Reference Citation: The particular code sections implemented, interpreted, or made specific by these proposed new and amended regulations are Government Code sections 4526–4529.5, 4529.10–4529.20, California Constitution, Article XXII sections 1–2, and Water Code sections 123 and 131.

INFORMATIVE DIGEST

Summary of Existing Laws and Effects of Proposed Rulemaking

Background and History: Before November 8, 2000

Under California constitutional law, services provided by State agencies generally must be performed

by State civil service employees. These services cover a broad range of activities—such as clerical support, building maintenance and security, and legal services. In some cases, however, the State may contract with private firms to obtain services. Such contracting is allowed, for example, if services needed by the State are: (1) of a temporary nature, (2) not available within the civil service, or (3) of a highly specialized or technical nature. Unlike the State, local governments are not subject to constitutional restrictions on contracting for services.

The State and local governments frequently contract with private firms for construction-related services, which include architectural, engineering, and environmental impact studies. State and local governments enter into these contracts through a competitive process of advertising for the service, selecting the firm determined to be best qualified, and negotiating a contract with that firm. However, neither the State nor most local government entities use a bidding process for these services. By comparison, bidding generally is used to acquire goods and for construction of projects.

Existing Law: Effective November 8, 2000

On November 7, 2000, the California voters approved an initiative measure (Proposition 35) that resulted in a constitutional amendment (see Article XXII, sections 1 and 2) and the enactment of certain statutory laws (see Government Code, sections 4529.10–4529.20).

The amended State Constitution allows the State and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Thus, government agencies could decide to contract out for these specific services in any case, rather than just on an exception basis.

The new enacted statutory laws:

- define the term “architectural and engineering services” to include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services; and
- require architectural and engineering services to be obtained through a fair, competitive selection process that avoids conflicts of interest.

Effect of Proposed Rulemaking

The proposed regulations reflect the constitutional amendments and statute enactment from November 8, 2000, which presently are not represented in the Department’s existing regulations that were last updated in 1982. The proposed regulations also define retainer agreements and their use.

INFORMATIVE DIGEST-POLICY STATEMENT OVERVIEW

The objective of the proposed regulations and proposed amended regulations is to improve DWR's internal procedures for contracting for architectural and engineering services.

The current DWR regulations were last amended/updated in 1982 and do not reflect the passage of Proposition 35 (an initiative measure effective since November 8, 2000) which eliminated certain restrictions on the State to allow contracting with private qualified entities for engineering and architectural services in all phases of public works projects.

The scope of definitions in the proposed regulations has been broadened and also clarified.

Government Code section 4526 authorizes the Department to adopt regulations for the aforementioned purposes.

The regulations in this rulemaking action specify the procedures the Department shall use for selecting architectural and engineering services.

COMPARABLE FEDERAL REGULATION OR STATUTE

The proposed regulations do not differ substantially from existing comparable federal statute or regulations. The proposed regulations avoid duplication and conflict with federal statutes and federal regulations.

SATISFACTION OF OTHER STATUTORY REQUIREMENTS

The proposed regulations shall be presented to the California Water Commission for approval as required by Water Code Section 161.

LOCAL MANDATE DETERMINATION

These regulations do not create a local mandate. The Department has determined that the proposed rulemaking does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed under part 7 (beginning with section 17500), Division 4, Title 2, of the Government Code.

DISCLOSURES/ESTIMATE OF ECONOMIC AND FISCAL IMPACT

Fiscal Impact on Local Agencies or School Districts: There will be no fiscal impact on local governments because they generally can now contract for architectural and engineering services. These regulations do not impose any cost on a local agency or school district which is required to be reimbursed pursuant to Government Code sections 17500–17630, nor do they impose any other non-discretionary cost or saving on a local agency.

Fiscal Impact on State Government: Unknown fiscal impact on State spending for architectural and engineering services and construction project delivery.

Actual impact will depend on how the State uses the contracting flexibility granted by these regulations. These regulations will not result in any cost or savings in federal funding to the State.

Initial Determination Regarding Impact on Housing Costs: The Department has made an initial determination and is not aware of any effect the proposed action will have on housing costs.

Initial Determination Regarding Economic Impact on Business: The Department has made an initial determination that the proposed action will not have a significant, statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. (These regulations increase the business opportunities since they are designed to select private firms that offer services to the Department.)

Assessment of Effect on Jobs and Businesses: The Department has assessed that the proposed action will not significantly create, expand or eliminate California jobs or businesses.

Cost Impact on Representative Person or Business: The Department has made an initial determination and is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Determination Regarding Effect on Small Business: The Department has made an initial determination and is not aware of any adverse affect on small businesses. Small businesses with access to electronic publication tools will have more of an opportunity to compete for services under by these regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DWR must determine that no reasonable alternative which it considered or which has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DWR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Ward Tabor, Assistant Chief Counsel
Department of Water Resources
Office of the Chief Counsel
1416 Ninth Street, Sacramento, CA 95814

Telephone: (916) 653-4829

Fax: (916) 653-0952

wtabor@water.ca.gov

The backup contact person for these inquiries is:

Devinder Sandhu

Department of Water Resources

Office of the Chief Counsel

1416 Ninth Street, Sacramento, CA 95814

Telephone: (916) 653-4429

sandhu@water.ca.gov

Questions on the substance of the proposed regulations may be directed to Ward Tabor.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Devinder Sandhu at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DWR will have the entire rulemaking file available for public inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons and the Economic and Fiscal Impact Statement (STD Form 399). Copies may be obtained by contacting Devinder Sandhu at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, DWR may adopt the proposed regulations substantially as described in this notice. If DWR makes substantive modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DWR adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Devinder Sandhu at the address indicated above. DWR will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Sandhu at the above address and will be available through the DWR website at www.water.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations can be accessed through the DWR website at www.water.ca.gov.

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED REGULATORY ACTION

CHANGES TO REGULATIONS GOVERNING MOBILEHOME AND SPECIAL OCCUPANCY PARKS TITLE 25 CALIFORNIA CODE OF REGULATIONS, DIVISION 1, CHAPTERS 2 AND 2.2

NOTICE IS HEREBY GIVEN that the California Department of Housing and Community Development (HCD), is proposing an action to amend, adopt and repeal existing regulations governing Mobilehome Parks, and to adopt new regulations governing Special Occupancy Parks.

PUBLIC HEARING

Public hearings have been scheduled at which time any interested party may present statements, orally or in writing, about this proposed regulatory action. Each hearing will continue until all testimony is completed, and will be held as follows:

NORTHERN CALIFORNIA

Thursday, June 26, 2003

HCD (Headquarters)

1800 3rd Street, Room 183/185

Sacramento, CA 95814

10:00 a.m.

SOUTHERN CALIFORNIA

Monday, July 7, 2003

HCD (Ontario Field Office)

3602 Inland Empire Blvd., Suite C-220

Ontario, CA 91764

10:00 a.m.

Pre-hearing registration will be conducted prior to the hearing. Those registered will be heard in order of their registration. Anyone else wishing to speak at the hearing will be afforded an opportunity after those registered have been heard. The time allowed for each person to present oral testimony may be limited if a substantial number of people wish to speak.

Individuals presenting oral testimony are requested, but not required, to submit a written copy of their statements. The hearing will be adjourned immediately following the completion of the oral testimony.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to HCD. All written comments must be received by HCD at this office no later than 5:00 p.m. on July 7, 2003, in order to be considered. Written comments may be submitted by mail, e-mail, or facsimile as follows:

By mail to:

The Department of Housing and
Community Development

Division of Codes and Standards
1800 Third Street, Room 260
Sacramento, CA 95814

Attn: Mobilehome Parks Program

By e-mail to: parksregs@hcd.ca.gov

By facsimile to: (916) 327-4712

PERMANENT ADOPTION OF REGULATIONS

Following the public comment period, HCD may adopt the proposals substantially as described below, or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of minor technical or grammatical changes, the text of any modified proposal will be available, for at least 15 days prior to its adoption, from the contact person designated in this Notice, and will be mailed to those persons who have submitted written or oral testimony related to this proposal, or who have requested notification of any changes to the proposal. HCD will accept written comments on the modified regulations during the 15-day period.

AUTHORITY AND REFERENCE

Health and Safety Code Section 18300 grants HCD the authority to adopt regulations governing mobilehome parks. Health and Safety Code Section 18865 grants HCD the authority to adopt regulations governing special occupancy parks. These regulations implement and interpret Health and Safety Code Sections 18402, 18404, 18421, 18502.5, 18503, 18551, 18552, 18554, 18601, 18605, 18610, 18612, 18613, 18613.4, 18613.5, 18613.7, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18865.1, 18865.3, 18866.3, 18870.2, 18870.3, 18870.4, 18871.3, 18871.10, 18872, 18873.1, 18873.3, 18873.4, and 18873.5. The actual text of these statutes is available on the world wide web at: <http://www.leginfo.ca.gov>

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

The Mobilehome Parks Act (Act) was enacted for the benefit of mobilehome park residents to assure their health, safety and general welfare, to provide

them a decent living environment, and to protect their investments in their manufactured homes and mobilehomes. The Act, prior to 2002, also provided this protection for the users and residents of special occupancy parks (recreational vehicle parks, tent camps, etc.) within the State. Legislation (Ch. 434, Stats 2001) divided the elements of each type of park into separate acts within the Health and Safety Code for clarity and more appropriate applicability of specific requirements. This legislation enacted Health and Safety Code Section 18863.3, which required HCD to adopt regulations which address this separation between mobilehome parks and special occupancy parks.

Summary of Existing Regulations

The Mobilehome Parks Program, within HCD's Codes and Standards Division, develops, administers and enforces uniform statewide standards which assure owners, residents, and users of mobilehome and special occupancy parks, protection from risks to their health and safety.

Summary of Effect of Proposed Regulatory Action

The purpose of these changes is to update the existing regulations for mobilehome parks and to comply with the legislative mandate to adopt separate regulations for special occupancy parks.

Those sections within Title 25, California Code of Regulations affected by this rulemaking, and the specific purpose for each adoption, amendment, or repeal contained in these proposed regulations, is set forth in the Initial Statement of Reasons for this regulatory action. Non-regulatory amendments to the authority and reference citations have also been made throughout the amended subchapter.

These proposed actions will greatly enhance the clarity and applicability of the current regulations. For example, a large portion of the changes involve renumbering and relocating sections and subsections so they are grouped with related requirements, and follow a logical sequence.

Additionally, certain terms such as "mobilehome, manufactured home, multi-unit manufactured housing" have been simplified with the term "MH-unit" which is newly defined in section 1002, whenever the requirements do not apply to recreational vehicles. This improves the understanding and applicability of the regulations.

Because the content of Chapter 2.2 is substantially the same in content as the related regulations currently in Chapter 2, the majority of the articles and sections adopted in Chapter 2.2, are renumbered sections moved from Chapter 2, and are shown changes without regulatory effect, as allowed under Ch. 1038, Stats. 2002. This too, provides continuity with the already familiar structure of Chapter 2.

Please note, there are no fee increases in this proposal. It may appear, however, that within the proposed amendments to Sections 1211 and 2211, a “new” fee for the installation of a Liquid Petroleum Gas (LPG) tank over 60 gallons, has been introduced.

However, this is not the case. This fee, which is currently reflected in Section 1020(m)(4), is being repeated and made specific within the amendment to Sections 1211 and 2211.

Additionally, the proposed amendment to Sections 1020.9 and 2020.9, for Standard Plan Approval (SPA) plan checking fees, were inserted. SPAs have been an HCD responsibility for accessory buildings and structures since the mid-1970’s. The hourly fee for this service was set at \$27.00 in 1979 and was located within Appendix D of the regulations. In the intervening years, there were minor fees increases. During that time, the SPA requirements were relocated to Appendix A. Although the current hourly fee (\$60.00) for plan checking was reflected in 1989 amendments to Sections 1022 and 1024, HCD did not concurrently update the SPA fees found in Appendix A.

Further, in 1994, due to the Northridge earthquake, SPAs for Earthquake Resistant Bracing Systems (ERBS), tie down systems and foundations, were added to the regulations, and reference the \$60.00 per hour plan check fee for all enforcement agency activities. Because the plan checking activity for tiedowns, ERBS and Foundations are identical to the plan checking activities for accessory buildings or structures, the Department assesses the same fee for both types of activities.

The proposed regulatory amendments will also delete Appendix A and incorporate its applicable provisions into the existing “Tiedown,” “ERBS,” and “Foundation SPA” activities sections.

These proposed regulatory amendments also address substantive changes which relate to the updating of the applicable building standards: the National Electrical Code (NEC), Uniform Plumbing Code (UPC), Uniform Building Code (UBC), and General Orders (GO) 95 and 128 as follows:

<u>Current reference</u>	<u>Update</u>
1978 and 1984 NEC	2001 California Electrical Code
1985 UPC	2001 California Plumbing Code
1985 UBC	2001 California Building Code
1974 GO 95 and 128	1998 GO 95 and 128 (as adopted by the CPUC)

Additionally, provisions from the California Fire Code for LPG tank installation are being added to reflect the recognized standard used by LPG distributors.

These proposed amendments also incorporate the following changes:

The minimum water pressure at maximum usage in parks has been raised from 15 to 20 pounds per square inch because, not only is the 20 lb standard the minimum pressure referenced in the California Plumbing Code, it also reflects the current, minimum, residual pressure for private fire hydrant systems.

Requirements for installing manufactured homes without installation instructions have been defined, requiring specific bolting and blocking procedures which mirror the procedures that the manufactures have long utilized.

Proposed Section 1618, *Responsibility For Costs* (existing section 1724) will be amended to assign the costs for abatement to both the home owner and the park owner/operator for violations related to the unit, accessory buildings or structures, or violations of the space, and only to the park owner/operator for all permanent buildings and accessory buildings or structures in the park under their ownership or control. This section currently designates the abatement costs only for a mobilehome or recreational vehicle. Although this is a substantive change to the regulations, the amendments reflect statutory requirements. (See Health and Safety Code Section 18420 which states that an owner of a unit is responsible for correction of violations attributable to the unit; Health and Safety Code Section 18402, which states that a park owner or operator is required to abate any nuisance in the park. Note: A nuisance is currently defined in Section 1002 of these regulations.)

Lastly, HCD is proposing the following substantive, but less restrictive, amendments:

Sanitary facilities for dependent lots (lots without drains, or units without sanitary facilities) were required to be within 400 feet of the lot. HCD proposes to increase this to 500 feet to reflect the adopted standard in the California Plumbing Code, and the general decline of units lacking integrated sanitary facilities.

Also, HCD proposes to address “unisex facilities” provided they are designated on a one-to-one ratio to designated facilities. This amendment was included to address a request by the campground and recreational vehicle parks industry.

SECTIONS AFFECTED

Following are the specific sections affected by this proposed action:

Chapter 2 inclusive of all sections, and newly created Chapter 2.2, inclusive of all sections:

Repeal Title of Subchapter 1.

Amend titles for Articles 2, 4, 7, 7.5, 8, 9, and 10.

Amend

Sections 1000, 1002, 1004, 1006, 1007, 1008, 1009, 1010, 1012, 1014, 1016, 1018, 1020, 1030, 1032, 1034, 1038, 1042, 1044, 1046, 1048, 1050, 1100, 1102, 1104, 1106, 1108, 1110, 1112, 1130, 1132, 1134, 1136, 1138, 1140, 1146, 1148, 1150, 1151, 1152, 1153, 1154, 1156, 1158, 1160, 1162, 1164, 1166, 1170, 1176, 1180, 1182, 1184, 1186, 1200, 1206, 1208, 1210, 1212, 1216, 1218, 1220, 1222, 1226, 1228, 1230, 1232, 1240, 1246, 1248, 1252, 1254, 1258, 1260, 1262, 1264, 1266, 1268, 1274, 1278, 1280, 1284, 1300, 1302, 1304, 1306, 1308, 1310, 1312, 1314, 1316, 1317, 1318, 1319, 1320, 1324, 1326, 1328, 1330, 1333, 1333.5, 1334, 1335, 1335.5, 1336, 1336.1, 1336.2, 1336.3, 1338, 1344, 1346, 1348, 1352, 1354, 1356, 1358, 1360, 1362, 1366, 1368, 1370, 1370.2, 1370.4, 1372.4, 1372.6, 1371, 1372, 1372.2, 1372.4, 1372.6, 1373, 1374, 1374.2, 1374.4, 1374.5, 1374.6, 1374.7, 1375, 1375.2, 1377, 1382, 1388, 1398, 1422, 1424, 1428, 1432, 1434, 1436, 1438, 1440, 1442, 1444, 1446, 1448, 1450, 1452, 1458, 1460, 1462, 1464, 1466, 1468, 1470, 1472, 1474, 1478, 1486, 1498, 1500, 1502, 1504, 1510, 1514, 1518, 1520, 1600, 1606, 1608, 1610, 1612, 1614, 1616, 1618, 1750, 1752, 1754, 1756, and 1758.

Repeal

Sections 1022, 1024, 1026, 1028, 1036, 1040, 1052, 1054, 1142, 1144, 1172, 1202, 1204, 1214, 1224, 1242, 1244, 1250, 1256, 1270, 1272, 1276, 1282, 1322, 1332, 1336.4, 1336.5, 1340, 1342, 1350, 1364, 1370.6, 1376, 1380, 1384, 1386, 1390, 1392, 1394, 1396, 1400, 1420, 1426, 1430, 1454, 1456, 1462, 1464, 1476, 1480, 1482, 1484, 1488, 1490, 1492, 1494, 1496, 1508, 1512, 1516, 1602, 1604, 1620, 1622, 1624, 1626, 1628, 1630, 1632, 1634, 1636, 1640, 1642, 1644, 1646, 1648, 1650, 1652, 1654, 1656, 1658, 1660, 1662, 1664, 1666, 1668, 1670, 1672, 1674, 1676, 1678, 1680, 1682, 1684, 1686, 1688, 1690, 1692, 1694, 1696, 1698, 1700, 1702, 1704, 1706, 1708, 1710, 1712, 1714, 1716, 1718, 1720, 1722, 1724, 1726, 1728, 1730, 1732, 1734, 1735, 1736, 1738, and 1740.

Adopt New Chapter 2:

Sections 1005, 1005.5, 1006.5, 1017, 1020.1, 1020.3, 1020.4, 1020.6, 1020.7, 1020.9, 1025, 1045, 1114, 1116, 1118, 1120, 1122, 1163, 1178, 1183, 1185, 1188, 1190, 1211, 1229, 1234, 1236, 1305, 1334.1, 1334.2, 1334.4, 1334.5, 1334.6, 1337, 1338.5, 1339, 1399, 1429, 1433, 1443, 1506, 1605, 1607, 1611, 1613, 1615, 1617, and 1619.

Repeal

Subchapter 2 title and all sections of subchapter 2.

Adopt New Chapter 2.2.

Adopt

Titles for Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11. Sections 2000, 2002, 2003, 2004, 2005, 2005.5, 2006, 2006.5, 2007, 2008, 2009, 2010, 2012, 2014, 2016, 2017, 2018, 2020.3, 2020.4, 2020.6, 2020.7, 2020.9, 2030, 2032, 2034, 2038, 2042, 2044, 2045, 2046, 2048, 2050, 2100, 2102, 2104, 2106, 2108, 2110, 2112, 2114, 2116, 2118, 2120, 2122, 2126, 2130, 2132, 2134, 2136, 2138, 2140, 2146, 2148, 2150, 2151, 2152, 2153, 2154, 2156, 2158, 2160, 2162, 2163, 2164, 2166, 2170, 2176, 2178, 2180, 2182, 2183, 2185, 2186, 2188, 2190, 2200, 2206, 2208, 2210, 2211, 2212, 2216, 2218, 2220, 2222, 2226, 2228, 2229, 2230, 2232, 2236, 2240, 2246, 2248, 2252, 2254, 2258, 2260, 2262, 2264, 2266, 2268, 2269, 2270, 2272, 2274, 2278, 2280, 2284, 2300, 2302, 2304, 2305, 2306, 2308, 2310, 2312, 2314, 2316, 2317, 2318, 2319, 2320, 2322, 2324, 2326, 2328, 2330, 2333, 2334, 2337, 2344, 2346, 2352, 2354, 2356, 2358, 2360, 2382, 2388, 2399, 2422, 2424, 2428, 2429, 2432, 2433, 2434, 2436, 2438, 2440, 2442, 2443, 2444, 2466, 2468, 2470, 2472, 2474, 2478, 2486, 2496, 2498, 2500, 2502, 2504, 2506, 2510, 2514, 2518, 2600, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2615, 2616, 2617, 2618, 2619, 2750, 2752, 2754, 2756, and 2758.

POLICY STATEMENT OVERVIEW

The Mobilehome Parks Program within HCD is responsible for adopting and enforcing preemptive state regulations for the construction, use maintenance, and occupancy of privately owned mobilehome and special occupancy parks within California.

Furthermore, recent legislation (Ch. 434, Stats. 2001) requires HCD to adopt separate regulatory provisions for special occupancy parks to avoid the frequent confusion caused by current differences between these types of parks and mobilehome parks. This situation has existed since 1985, when the mobilehome parks regulations were merged with the special occupancy park regulations. The second portion of this rulemaking, commencing with section 2000, addresses these required changes.

HCD is proposing to adopt, amend, and repeal regulations relating to both the Mobilehome Parks Act and Special Occupancy Parks Act. HCD's regulatory amendments propose to integrate universally accepted construction standards into the proposed regulations to maintain the same standards mandated or authorized by statute throughout the State of California.

SMALL BUSINESS IMPACT STATEMENT

HCD has determined that the proposed regulations will not affect small businesses. These regulations impose no new fees, but serve only to clarify existing practices, and to address the differences between

requirements for mobilehome parks and special occupancy parks by adopting separate regulations for each of these entities.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

HCD has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

HCD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments serve only to clarify existing practices and to address the differences between requirements for mobilehome parks and special occupancy parks by adopting separate regulations for each of these entities.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

HCD has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

HCD must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of HCD, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. HCD invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

HCD has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from HCD at the following address or voice mail number:

The Department of Housing and
Community Development
Division of Codes and Standards
1800 Third Street, Room 260
Sacramento, CA 95814
Voice Mail: (916) 327-1800

Please note, the rulemaking record for this action is voluminous, exceeding 600 pages in length. Consequently, you may wish to request copies of individual regulation sections and their specific rationale contained in the Initial Statement of Reasons, rather than the entire rulemaking record.

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

<http://www.hcd.ca.gov/codes/mp>

Questions regarding the regulatory process may be directed to:

Michelle Garcia, Staff Services Manager
Telephone Number (916) 327-2798/
fax (916) 327-4712
e-mail: mgarcia@hcd.ca.gov

Clarification regarding the substance of this regulatory proposal may be directed to:

Bradley Harward, CSA I
Telephone Number (916) 324-4907/
fax (916) 327-4712
e-mail: bharward@hcd.ca.gov

GENERAL PUBLIC INTEREST

AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS OF THE AGRICULTURAL LABOR RELATIONS BOARD AND RELATED COURT DECISIONS

PLEASE TAKE NOTICE that the Agricultural Labor Relations Board's Index of Precedential Deci-

sions (Case Digest), which includes supplements through Volume 28 (2002), is available for purchase by contacting:

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board
915 Capitol Mall, Third Floor
Sacramento, CA 95814
Phone: (916) 653-3741
Fax: (916) 653-8750
e-mail: jbarbosa@alrb.ca.gov

The Case Digest also may be viewed online at www.alrb.ca.gov.

This notice is published pursuant to California Government Code section 11425.60, subdivision (c).

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

30-DAY PUBLIC NOTICE AND COMMENT PERIOD

NOTICE IS HEREBY GIVEN that the Secretary for the California Environmental Protection Agency (Cal/EPA) has determined the annual Unified Program, State Surcharge according to California Health and Safety Code (HSC), Division 20, Chapter 6.11, Section 24040.5(b), and California Code of Regulations, Title 27, Division 1, Subdivision 4, Chapter 1, Section 15240.

The State Surcharge is an assessment on each entity regulated under the Unified Program used to fund the necessary and reasonable costs of all State Agencies responsible for program implementation, ongoing maintenance, and oversight of the Unified Program. The following agencies rely on the surcharge to fund Unified Program activities: Cal/EPA Office of the Secretary, the State Water Resources Control Board, the Department of Toxic Substances Control, the Governor's Office of Emergency Services, and the Office of the State Fire Marshal. The State Surcharge is evaluated annually by the Secretary and revised as necessary to meet statutory and regulatory requirements.

Current surcharge fees were established in 2001 at an artificially low level due to an existing Unified Program account reserve balance. The account reserve balance was applied to fiscal years (FY) 01/02 and 02/03 in order to keep the surcharge fees as low as possible for as long as possible. When these fees were established in 2001, it was intended that they would remain in effect for FY 01/02 and 02/03 (while the account balance was drawn down) and would need to be increased for FY 03/04 once the account balance was depleted.

Now that the account reserve balance has been used as intended, existing surcharge fees will not generate enough revenue to support existing functions. The new fees proposed in this notice establish adequate stable funding for current program activities and allow for a small reserve in the Unified Program account to ensure adequate funding when fee remittance lags behind actual expenditures. No additional fee increases are expected in the foreseeable future unless there are unexpected program changes.

Similar to all Unified Program Agencies, Cal/EPA utilizes a fee accountability system to ensure that only the necessary and reasonable costs of meeting program mandates are covered by the State Surcharge. All surcharge funds are maintained in a distinct account, and receipts and expenditures are continuously managed and reported monthly to Cal/EPA and State Agency managers. The State Agencies drawing funds from the account annually prepare detailed workplans to account for all legislatively authorized resources and other costs devoted to program responsibilities. Through the course of the year, each agency uses a staff time reporting system to bill only listed Unified Program activities to the account. An annual local-state strategic planning session, in conjunction with on-going mandated responsibilities, provides the basis for the workplans each year.

The State Surcharge will be public noticed in the California Regulatory Notice Register (Z-Register) for 30 days during which time comments will be accepted on the proposed Surcharge rates. Following the 30-day comment period the Secretary will publish the final Surcharge rates in the Z-Register. Certified Unified Program Agencies will be responsible for collecting the new Surcharge, as part of their Single Fee System, 60 days following the publishing of the final Surcharge in the Z-Register.

For this public notice, the California Environmental Protection Agency will not hold a public hearing to receive comments, but does request the public to submit written comments by June 22, 2003, to the attention of:

Mr. Larry Matz, Chief
Unified Program Section
California Environmental Protection Agency
10011 Street, 2nd Floor
Sacramento, California 95814

Although not required by law, a response will be provided for each comment received.

STATE SURCHARGE

For Fiscal Year 2003–2004, the State Surcharge is set as follows:

Hazardous Materials	\$24.00
Underground Storage Tank	\$15.00
California Accidental Release Prevention Program	\$350.00

DEPARTMENT OF HEALTH SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

DISPROPORTIONATE SHARE HOSPITAL PAYMENT ADJUSTMENT PROGRAM FOR INPATIENT SERVICES

This general public notice provides information with respect to the determination of Medi-Cal payments for inpatient hospital services. The Department of Health Services (Department) intends to submit an amendment to the California Medicaid State Plan (State Plan) to delete hospital bad debt from the formula used to calculate the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) limit, which in turn, is used to calculate Disproportionate Share Hospital (DSH) payments. This proposed amendment, if approved by Centers for Medicare & Medicaid Services, will be effective for the State Fiscal Year 2002-03 of the DSH payment adjustment year, and subsequent years.

The current State Plan includes bad debt in the computation of OBRA '93 hospital specific limits. Part 413.80 of Title 42 of the Code of Federal Regulations states, in part, that bad debt is a reduction from revenue and is not to be included in allowable costs, and that such cost has already been incurred in the production of the services. This amendment will eliminate double counting of hospital bad debt.

Copies of the modifications discussed above may be requested by writing to Mr. Roberto B. Martinez, Chief, Medi-Cal Policy Division, Department of Health Services, 714 P Street, Room 1550, Sacramento, CA 95814.

Interested parties have the opportunity to comment in writing on the changes described herein. Any written statements or comments must be received by the Rate Development Branch, Department of Health Services, 714 P Street, Room 1550, Sacramento, CA 95814 by June 30, 2003.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF CONSENT ORDER GIBSON ENVIRONMENTAL INC. SITE BAKERSFIELD, CALIFORNIA

The Department of Toxic Substances Control ("DTSC"), pursuant to the authority vested in DTSC under California Health and Safety Code, Sections

25355.5, 25358.3, and 25187, proposes to finalize a Consent Order regarding the Gibson Environmental Inc. Site located at 2401 Gibson Street, Bakersfield, California ("Site") with Evergreen Oil Inc., a California corporation, Evergreen Holdings Inc., a Delaware corporation and Evergreen Environmental Holdings Inc., a Nevada corporation.

On November 8, 1999, the DTSC issued an Imminent and/or Substantial Endangerment Determination and Order and Remedial Action Order, Docket No. I&SE 99/00-002 (I&SE Order), to a number of parties. On or about January 6, 2000, DTSC issued an amendment to the I&SE Order. The Consent Order is intended to obtain settlement, as specified in the Consent Order, with Evergreen Oil Inc., a California corporation, Evergreen Holdings Inc., a Delaware corporation and Evergreen Environmental Holdings Inc., a Nevada corporation, on DTSC's I&SE Order, which includes response costs incurred and to be incurred by DTSC at or in connection with the Site. The Consent Order provides for contribution protection to these settling parties to the fullest extent provided by law.

DTSC will consider public comments on the Consent Order which are received by DTSC within thirty (30) days of the date of this notice. DTSC may withhold finalization of the Consent Order if such comments disclose facts or considerations that indicate the proposed Consent Order is inappropriate, improper or inadequate.

The Consent Order and additional background information relating to the Site are available for public inspection at the Department of Toxic Substances Control, 8800 Cal Center Drive, Sacramento, California 95826-3268. A copy of the Consent Order may also be obtained by contacting the DTSC representative listed below:

Greg Honzay, Project Manager
Permitting Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3268
Phone: (916) 255-6678
Facsimile: (916) 255-3596

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov.

You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225—FAX (916) 323-6826. Please request by OAL file number.

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
OAL File No. 03-0325-02s
(Gov. Code Sec. 11349.3)**

In re:

AGENCY: State Water Resources Control Board
ACTION: Adopt section 2050.6; amend sections 2050, 2050.5, 2051, 2052, 2053, 2064, 2066, and 2067 of Title 23 of the California Code of Regulations

SUMMARY OF RULEMAKING ACTION

This rulemaking action revises procedural regulations for a review by the State Water Resources Control Board of a regional board action or failure to act, as authorized by Water Code Section 13320.

SUMMARY OF DECISION

On May 7, 2003, the Office of Administrative Law (OAL) disapproved the above-referenced rulemaking action. The reasons for the disapproval are summarized here and explained in detail below.

A. The provision in regulation section 2050.5(d)(2) which provides that petitions may be held in abeyance “unless the regional board provides reasonable grounds for objection,” and the provisions in regulation sections 2050(a)(9) and 2050(c), which limit the scope of the petition to the State Board to “substantive issues or objections raised before the regional board” have not been made available for public comment as required by subsection (c) of Government Code Section 11346.8.

B. The following provisions fail to satisfy the Clarity standard: (1) the part of 2050(a)(2) which provides that “a statement should be included” in the petition giving the reasons for not including a copy of the regional board order or resolution in the petition if it is unavailable; (2) the part of 2050(b) which provides: “[In the case of service by facsimile, only the petition itself should be sent. All exhibits should be included with the hard copy.]” (Brackets in original.); (3) the part of 2050.6 which provides that “If any person, requests that the state board consider evidence not previously provided to the regional board, that person shall provide a statement that additional evidence is available that was not presented to the regional board or that evidence was improperly excluded by the regional

board.”; (4) the part of 2064 which provides: “The state board may, in its discretion, supplement the record with any other evidence and testimony deemed appropriate to consideration of the issues.”

C. Necessity has not been demonstrated for the deletion of the existing provision in regulation 2052(c)(2) which provides that the state board may require parties to submit names of witnesses, qualifications of witnesses, subject of testimony, and may require copies of exhibits to be supplied to all parties and the board not later than 10 days prior to the hearing.

D. It is difficult to verify whether the record is complete because the tape of the workshop ends abruptly 5 1/2 minutes before the end of side A on a tape which also contains a side B

Date: May 14, 2003

MICHAEL McNAMER
Senior Counsel

for: Sheila R. Mohan
Acting Director/Chief Counsel

Original: Celeste Cantu, Executive Director

cc: Marleigh Wood

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

**AGRICULTURAL LABOR RELATIONS BOARD
Mandatory Mediation and Conciliation**

The regulatory action deals with mandatory mediation and conciliation. The regulations are effective upon filing today pursuant to Government Code section 11343.4, subdivision (c).

Title 8

California Code of Regulations

ADOPT: 20400, 20401, 20402, 20403, 20404,
20405, 20406, 20407, 20408, 20450

Filed 05/07/03

Effective 05/07/03

Agency Contact:

Joseph A. Wender, Jr.

(916) 653-4054

AIR RESOURCES BOARD

Diesel Retrofit Verification

This action adopts standards and procedures for a program that will offer ARB verification of diesel emission control systems designed to be retrofit to in-use diesel engines for the purpose of reducing emissions.

Title 13

California Code of Regulations

ADOPT: 2700,2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710

Filed 05/12/03

Effective 06/11/03

Agency Contact: Kirk C. Oliver (916) 322-6533

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

Low Income Housing Tax Credit

These regulations provide for allocation of low-income housing tax credits as authorized by federal and state law. Tax-exempt financing, permissible developer fees, Set-Aside for special needs points, leveraging points, service amenities points, and neighborhood revitalization points, are just some of the many subjects addressed by these regulations. Pursuant to Health and Safety Code section 50199.17, this emergency regulatory action became effective on March 19, 2003, when adopted by the Committee. These March 19 regulations supersede emergency regulations adopted and made effective by the Committee on January 29, 2003. The January 29 regulations were filed with the Secretary of State on May 8, 2003, but never printed in the California Code of Regulations.

Title 17

California Code of Regulations

ADOPT: 10300, 10302, 10305, 10310, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10330, 10335, 10337 AMEND: 10325, 10327

Filed 05/08/03

Effective 05/08/03

Agency Contact: Ed Johnson (916) 654-5882

DEPARTMENT OF CHILD SUPPORT SERVICES

Compromise of Arrearages

This emergency readopt implements Family Code section 17550 which permits compromise of child support arrearages under specified conditions.

Title 22

California Code of Regulations

ADOPT: 119015, 119019, 119045, 119069, 119076, 119191

Filed 05/12/03

Effective 05/12/03

Agency Contact: Lucila Ledesma (916) 464-5087

DEPARTMENT OF HEALTH SERVICES

Drinking Water Maximum Contaminant Levels

In this regulatory action, the Department of Health Services amends regulations relating to the "California Safe Drinking Water Act," including revising the maximum contaminant levels for six chemicals and the detection limit for one chemical.

Title 22

California Code of Regulations

AMEND: 64431, 64444, 64445.1, 64468.1, 64468.2, 64468.3

Filed 05/13/03

Effective 06/12/03

Agency Contact:

Charles E. Smith

(916) 657-0730

DEPARTMENT OF MOTOR VEHICLES

House Car Endorsement

This rulemaking authorizes the operation of a house car over forty feet, but not over forty-five feet, with a valid class B non-commercial license with a house car endorsement issued by the department.

Title 13

California Code of Regulations

ADOPT: 147.00

Filed 05/12/03

Effective 06/11/03

Agency Contact:

Bonnie DeWatney

(916) 657-8954

DEPARTMENT OF MOTOR VEHICLES

Uniform Insurance Vehicles

This regulatory action establishes the content and format of the uniform insurance card that is to be provided by insurance companies to policyholders for the policyholders to submit to the Department of Motor Vehicles as evidence of liability insurance upon application for renewal of registration of a motor vehicle. This regulation will become effective on 1/1/04.

Title 13

California Code of Regulations

ADOPT: 82.00

Filed 05/07/03

Effective 01/01/04

Agency Contact: Ann Myrick

(916) 657-8857

DEPARTMENT OF SOCIAL SERVICES

Child Care Provider Notification

This Certificate of Compliance requires child care providers to inform parents if an employee has been granted an exemption to work in a child care facility. (Previous OAL file ##02-0806-04E, 02-1125-01EE.)

Title 22, MPP

California Code of Regulations

AMEND: 101218.1, 102419, 102421

Filed 05/12/03
Effective 05/12/03

Agency Contact:
Anthony J. Velasquez (916) 657-2586

OFFICE OF ADMINISTRATIVE LAW

Repeal of Determination Procedures

In this Certificate of Compliance regulatory action, the Office of Administrative Law repeals its regulations regarding "Procedures for Regulatory Determinations."

Title 1
California Code of Regulations
REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, App. A (Form 1013)
Filed 05/08/03
Effective 05/08/03
Agency Contact: Debra Cornez (916) 323-6831

STATE LANDS COMMISSION

Conflict of Interest Code

This Conflict of Interest Code filing has been approved and certified by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 2
California Code of Regulations
AMEND: 2970
Filed 05/08/03
Effective 06/07/03
Agency Contact: Beverly Terry (916) 574-2503

STATE PERSONNEL BOARD

Equal Employment Opportunity for Minorities

The action amends the terminology and guidelines for work force data collection and evaluation of equal employment opportunity and related activities within California state civil service and local agency merit systems.

Title 2
California Code of Regulations
AMEND: 547.80, 17030, 17111, 17112, 17151
REPEAL: 547.81, 17434
Filed 05/07/03
Effective 05/07/03
Agency Contact: Steve Unger (916) 651-8461

STATE PERSONNEL BOARD

Layoffs

This regulatory action is intended to implement the Third District Court of Appeal decision in *Connerly v. State Personnel Board* (2001), 92 Cal. App.4th 16, which found that while Government Code section 19798 is not facially invalid under equal protection principles, the more restrictive Proposition 209 would preclude the layoff and reemployment scheme autho-

rized by Government Code section 19798 unless required by federal law or the United States Constitution or in cases where failure to employ such a scheme would result in ineligibility for a federal program with a loss of federal funds. Pursuant to section 18215 of the Government Code, this filing is not subject to all of the normal requirements of the Administrative Procedure Act nor full review by the Office of Administrative Law.

Title 2
California Code of Regulations
ADOPT: 471.1 AMEND: 470, 470.1, 471, 472, 17502, 17520
Filed 05/07/03
Effective 05/07/03
Agency Contact: Steve Unger (916) 651-8461

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN JANUARY 08, 2003 TO MAY 14, 2003

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

05/08/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, App. A (Form 1013)
01/21/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, Appendix A

Title 2

05/08/03 AMEND: 2970
05/07/03 AMEND: 547.80, 17030, 17111, 17112, 17151 REPEAL: 547.81, 17434
05/07/03 ADOPT: 471.1 AMEND: 470, 470.1, 471, 472, 17502, 17520
05/01/03 AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153
04/28/03 AMEND: 1897
04/21/03 ADOPT: 1185.02, 1186 AMEND: 1181.1, 1183, 1183.01, 1185, 1185.01, 1185.02, 1185.1, Article 6 title. REPEAL: 1185.2, 1186, 1186.1, 1186.2, 1186.3, 1188.5
04/10/03 AMEND: 18313

04/09/03 ADOPT: 18550.1 AMEND: 18225.7
 04/04/03 AMEND: 599.885
 04/03/03 AMEND: 599.515
 04/03/03 ADOPT: 23000, 23100, 23100, 23200, 23300
 04/01/03 AMEND: 52.4
 03/27/03 ADOPT: 18754
 03/24/03 AMEND: 321
 02/28/03 AMEND: 599.931
 02/27/03 ADOPT: 1859.2, AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, 1859.145
 02/25/03 REPEAL: 18707.3
 02/24/03 AMEND: 18312
 02/24/03 ADOPT: 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445
 02/19/03 AMEND: 1859.79, 1859.79.3, 1859.81.1, 1859.83, 1859.107
 02/18/03 AMEND: 18704.2
 02/18/03 AMEND: 18991
 02/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859, 171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1
 02/13/03 AMEND: 1859.77.2
 02/11/03 AMEND: 1897
 02/11/03 AMEND: 1555
 02/06/03 ADOPT: 1859.74.5, 1859.74.6, 1859.81.2, 14859.81.3 1859.105.2 AMEND: 1859.2, 1859.74, 1859.76, 1859.77.1, 1859.81.1, 1859.90, 1859.103, 1859.104
 02/06/03 ADOPT: 50
 02/03/03 ADOPT: 649.23, 649.24, 649.25
 02/03/03 AMEND: 649.11
 01/30/03 ADOPT: 18530.2
 01/16/03 ADOPT: 1859.71.2, 1859.78.4, 1859.108 AMEND: 1859.50, 1859.70, 1859.72, 1859.73.1, 1859.73.2, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.100, 1859.101, 1859.102, 1859.107
 01/16/03 ADOPT: 18545
 01/16/03 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
 01/16/03 AMEND: 18700

01/16/03 AMEND: 18705.1
 01/13/03 ADOPT: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.9.1, 1866.12, 1866.13, 1866.14 AMEND: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.5, 1866.5.3, 1866.7, 1866.8, 186

01/08/03 ADOPT: 18535

Title 3

05/05/03 ADOPT: 1310, 1310.1, 1310.2, 1310.3
 04/24/03 AMEND: 6000, 6710
 04/21/03 AMEND: 3417(b)
 04/21/03 AMEND: 3423(b)
 04/15/03 AMEND: 3423(b)
 04/08/03 ADOPT: 760, 760.1, 760.2, 760.3, 760.4, 760.5, 760.6, 760.7, 760.9 REPEAL: 760, 765
 04/07/03 AMEND: 3417(b)
 04/03/03 AMEND: 300(c)
 04/01/03 AMEND: 3417(b)
 03/26/03 ADOPT: 797
 03/20/03 AMEND: 3700(c)
 02/06/03 ADOPT: 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5
 02/03/03 AMEND: 3700(c)
 01/28/03 AMEND: 3417(b)
 01/27/03 AMEND: 3700(C)
 01/21/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784

Title 4

04/09/03 AMEND: 1467
 03/06/03 AMEND: 8072, 8074
 02/13/03 ADOPT: 10151, 10152, 10153, 10154, 10155, 10156, 10157 10158, 10159, 10160, 10161, 10162
 01/27/03 ADOPT: 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, 12310 AMEND: 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, 12310

Title 5

05/01/03 ADOPT: 1218.5 AMEND: 1200, 1204, 1209, 1211, 1212, 1215, 1216, 1217, 1217.5, 1219, 1219.5, 1220, 1225
 04/21/03 ADOPT: 11990
 04/15/03 AMEND: 18106
 04/14/03 AMEND: 11510, 11512.5(a)(11), 11517 REPEAL: 11510(j)
 04/07/03 ADOPT: 80020.1
 04/03/03 ADOPT: 11971, 11972, 11973, 11974, 11975, 11976, 11977, 11978, 11979, 11980

CALIFORNIA REGULATORY NOTICE REGISTER 2003, VOLUME NO. 21-Z

03/18/03 AMEND: 20438, 20440
03/12/03 ADOPT: 53207
02/24/03 AMEND: 18301
02/14/03 ADOPT: 54400
01/30/03 AMEND: 80043
01/29/03 AMEND: 31000, 31001, 31003, 31004, 31005, 31006, 31007
01/27/03 ADOPT: 42397, 42397.1, 42397.2, 42397.3, 42397.4, 42397.5, 42397.6, 42397.7, 42397.8, 42397.9, 42397.10, 42397.11
01/16/03 ADOPT: 9531, 9532
01/08/03 ADOPT: 11303, 11304, 11305, 11306, 11307, 11308, 11316 AMEND: 11303, 11304, 11305 REPEAL: 4304, 4306, 4311, 4312

Title 8

05/07/03 ADOPT: 20400, 20401, 20402, 20403, 20404, 20405, 20406, 20407, 20408, 20450
05/01/03 AMEND: 10122, 10133.15, 10133.16
05/01/03 AMEND: 10106.1, 10107.1, 10111.2
04/09/03 AMEND: 15210
04/07/03 AMEND: 15251
03/26/03 AMEND: 3279, 3280
03/03/03 ADOPT: 17000 REPEAL: 17000
02/24/03 AMEND: 451, 527
01/30/03 AMEND: 336
01/29/03 ADOPT: 10133.16, 10133.17, 10133.18, 10133.19, 10133.20, 10133.21, 10133.22, 10122.1, 10127.3, 10131.2, 10133.10, 10133.11, 10133.12, 10133.13, 10133.14, 10133.15 AMEND: 10122, 10131, 10133, 10133.2 REPEAL: 10133.1
01/28/03 AMEND: 1604.5(c)(3) , 1604.6(a)
01/21/03 ADOPT: 339.9 AMEND: 339.8.1
01/09/03 AMEND: 769
01/09/03 ADOPT: 412.2 AMEND: 403, 404, 405.1, 411, 411.1, 411.2, 418, 420 REPEAL: 407, 407.1, 407.2, 407.3,
01/09/03 AMEND: 9771, 9771.2, 9771.66, 9772, 9779, 9779.1, 9779.3, 9779.4, 9779.45
01/08/03 ADOPT: 46.1

Title 9

03/25/03 AMEND: 821
02/20/03 AMEND: 9100

Title 10

05/06/03 ADOPT: 2498.6
04/29/03 ADOPT: 2192.1, 2192.2, 2192.3, 2192.4, 2192.5, 2192.6, 2192.7, 2192.8, 2192.9, 2192.10, 2192.11, 2192.12, 2192.13 REPEAL: 01-0905-01E, 02-0129-02 EE, 02-0531-04 EE

04/24/03 ADOPT: 2278, 2278.1, 2278.2, 2278.3, 2278.4, 2278.5

04/24/03 ADOPT: 2695.85 AMEND: 2695.1, 2695.2, 2695.3, 2695.4, 2695.5, 2695.6, 2695.7, 2695.8, 2695.9, 2695.10, 2695.11, 2695.12, 2695.14

04/17/03 AMEND: 5002

03/27/03 AMEND: 260.211, 260.211.1

03/20/03 ADOPT: 2698, 9910, 2698.99.11, 2698.99.12, 2698.99.13

03/20/03 ADOPT: 2187.4

03/13/03 ADOPT: 2020, 2021 AMEND: 250.51

03/10/03 ADOPT: 2175, 2175.1, 2175.2, 2175.3, 2175.4, 2175.5, 2175.6, 2175.7, 2175.8, 2175.9, 2175.10, 2176, 2176.1, 2176.2, 2176.3, 2176.4, 2177, 2177.1, 2177.2, 2177.3, 2177.4, 2177.5, 2177.6, 2177.7, 2177.8, 2177.9, 2177.10, 2177.11, 2177.12, 2177.13, and 2177

03/10/03 ADOPT: 2670.1, 2670.2, 2670.3, 2670.4, 2670.5, 2670.6, 2670.7, 2670.8, 2670.9, 2670.10, 2670.11, 2670.12, 2670.13, 2670.14, 2670.17, 2670.18, 2670.19, 2670.20, 2670.21, 2670.22, 2670.23, 2670.24,

03/06/03 AMEND: 2130.3

03/04/03 ADOPT: 260.230, 260.230.1, 260.231.2, 260.231.3 260.236.1, 260.236.2, 260.237.2 AMEND: 260.231, 260.236, 260.237.1, 260.240, 260.241.2, 260.241.3, 260.241.4, 260.242

02/27/03 ADOPT: 5.6182, 5.6183, 30.30, 30.31, 30.40, 30.41, 30.50, 30.51, 30.60, 30.61, 30.70, 30.71, 30.72, 30.73, 30.105, 30.402, 30.406, 30.500, 30.802, 30.1000 AMEND: 30.101, 30.102, 30.103, 30.300, 30.301, 30.302, 30.304, 30.306, 30.401, 30.403, 30.404, 30.

02/13/03 AMEND: 3200

02/11/03 AMEND: 2646.6 REPEAL: 2646.7, 2646.8, 2646.9, 2646.10, 2646.11

01/21/03 AMEND: 2690.1, 2690.2

01/16/03 AMEND: 2498.6

01/13/03 ADOPT: 2498.6

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05/05/03 AMEND: 1005

04/07/03 AMEND: 1005, 1052, D-2

04/03/03 ADOPT: 977.52 AMEND: 977.20, 977.43, 977.44, 977.45, 977.50, 977.51

02/06/03 AMEND: 1005, 1070, 1082

02/03/03 AMEND: 1081(a)(31), 1081(a)(32)
 01/17/03 ADOPT: 3100, 3101, 3102, 3103, 3200,
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05/12/03 ADOPT: 2700, 2701, 2702, 2703, 2704,
 2705, 2706, 2707, 2708, 2709, 2710
 05/12/03 ADOPT: 147.00
 05/07/03 ADOPT: 82.00
 05/06/03 AMEND: 1239
 05/01/03 ADOPT: 2273.5 AMEND: 2260, 2261,
 2262.6, 2263, 2272, 2273
 04/17/03 AMEND: 115.07
 04/17/03 ADOPT: 157.00
 04/16/03 AMEND: 1956.8
 04/14/03 AMEND: 2412(b)
 03/03/03 ADOPT: 225.00, 225.06, 225.12, 225.15,
 225.21, 225.24, 225.27, 225.30, 225.33,
 225.39, 225.48, 225.57, 225.60, 225.66,
 and 225.69 AMEND: 225.03, 225.09,
 225.18, 225.36, 225.42, 225.45, 225.51,
 225.54, 225.63, and 225.72
 02/21/03 AMEND: 110.04
 02/18/03 REPEAL: 260.01, 262.00, 262.05
 02/06/03 AMEND: 55.17
 02/04/03 ADOPT: 551.14, 551.15, 551.16, 551.17
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05/05/03 ADOPT: 11021
 05/01/03 AMEND: 27.80
 04/30/03 AMEND: 791.7, 870.15, 870.17, 870.19,
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 04/30/03 AMEND: 6504, 6578.4, 6600.1
 04/28/03 AMEND: 2930
 04/17/03 AMEND: 11945
 04/15/03 ADOPT: 1.39, 1.49, 27.83 AMEND:
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 04/15/03 ADOPT: 3704.1
 04/14/03 ADOPT: 1.92 AMEND: 671, 671.1
 04/08/03 AMEND: 791.7
 04/07/03 ADOPT: 4970.09 AMEND: 4970.00,
 4970.01, 4970.02, 4970.03, 4970.04,
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 04/04/03 ADOPT: 17853.0, 17854, 17588.2,
 17855.4, 17857.1, 17859.1, 17863.4,
 17867.5, 17868.5, 18227 AMEND:
 17850, 17852, 17855, 17862, 17862.1,
 17863, 17865, 17866, 17867, 17868.1,
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04/04/03 ADOPT: 17211, 17211.1, 17211.2,
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04/01/03 AMEND: 2090, 2105, 2420, 2425, 2530 ,
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04/01/03 ADOPT: 17225.710, 17225.717,
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 18478.5, 18494.5, 18499.1, 18499.2,
 18499.3, 18499.4, 18499.5, 18499.6,
 18499.7, 18499.8, 18499.9 AMEND:
 17225.715, 17350, 173

03/27/03 AMEND: 708

03/26/03 AMEND: 150.02, 150.04

03/26/03 AMEND: 120, 120.3

03/10/03 ADOPT: 632 AMEND: 630

03/10/03 ADOPT: 150.05 AMEND: 150, 150.03

03/06/03 AMEND: 18464, 18465

03/05/03 ADOPT: 18360, 18361, 18362, 18363,
 18364, 18365, 18366, 18367, and 18368

03/04/03 AMEND: 180.2

03/04/03 ADOPT: 15251

03/04/03 ADOPT: 749.2

02/27/03 ADOPT: 105.5 AMEND: 195

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02/03/03 AMEND: 120.3

01/28/03 ADOPT: 6593, 6593.1, 6593.2, 6593.3,
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01/21/03 ADOPT: 14120 AMEND: 14101, 14102,
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01/17/03 AMEND: 180.15

01/09/03 ADOPT: 52.00, 52.01, 52.02, 52.03,
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05/06/03 AMEND: 3041.3(b)

04/15/03 REPEAL: 3901.1, 3901.1.2, 3901.3.1,
 3901.5.1, 3901.5.2, 3901.5.3, 3901.5.4,
 3901.5.5, 3901.5.6, 3901.7.1, 3901.7.2,
 3901.7.3, 3901.9.2, 3901.9.3, 3901.9.5,
 3901.9.6, 3901.11.1, 3901.13.1,
 3901.13.2, 3901.13.3, 3901.15.1,
 3901.15.2, 3901.15.3, 3901.15.4,

04/08/03 AMEND: 3025, 3315

03/18/03 AMEND: 3006

03/06/03 ADOPT: 3375.5 AMEND: 3000, 3375,
 3375.1, 3375.2, 3375.3, 3375.4, 3377

02/18/03 ADOPT: 3054.2(e)(2)(H), 3170, 3170.1, 3171, 3172, 3172.1, 3172.2, 3173, 3173.1, 3173.2, 3174, 3175, 3176, 3176.1, 3176.2, 3176.3, 3176.4, 3177, 3178, 3179 AMEND: 3045.2(e)(2)(F) REPEAL: 3170, 3170.5, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179

01/21/03 AMEND: 3075.2

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05/05/03 AMEND: 2602, 2603, 2604, 2606, 2610, 2614, 2615, 2616, 2620, 2620.5, 2621, 2623, 2624, 2630, 2630.2, 2630.3, 2649, 2655, 2656

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05/01/03 AMEND: 2602, 2615, 2620

04/30/03 ADOPT: 1070.2 AMEND: 1070, 1070.1

04/28/03 AMEND: 3340.1, 3392.1, 3392.2, 3392.3, 3392.5, 3392.6 REPEAL: 3392.4

04/25/03 ADOPT: 1313.01, 1313.02, 1313.03, 1313.04, 1313.05, 1313.06

04/24/03 AMEND: 1444.5

04/24/03 AMEND: 1320

04/21/03 ADOPT: 1399.380, 1399.381, 1399.382, 1399.383, 1399.384, 1399.385, 1399.387, 1399.388, 1399.389, 1399.390 AMEND: 1399.302, 1399.370, 1399.374, 1399.376, 1399.380 REPEAL: 1399.375

04/14/03 AMEND: 109, 111

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04/08/03 AMEND: 2070, 2071

04/07/03 AMEND: 1381, 1390, 1397.64

04/07/03 ADOPT: 3504.5

03/13/03 AMEND: 1807.2

03/13/03 AMEND: 404

03/06/03 AMEND: 1393

03/03/03 AMEND: 3340.1

03/03/03 AMEND: 1397.12

02/18/03 AMEND: 87, 89.1

02/13/03 AMEND: 1399.508

02/11/03 AMEND: 1720.1

02/11/03 AMEND: 1388, 1392

02/10/03 AMEND: 1717, 1745

02/06/03 AMEND: 1082.1

01/29/03 AMEND: 2542, 2542.1, 2547, and 2547.1

01/23/03 ADOPT: 1399.153.10 AMEND: 1399.153, 1399.153.1, 1399.153.2, 1399.153.3, 1399.153.4, 1399.153.5, 1399.153.6, 1399.153.7 1399.153.8, 1399.153.9,

01/21/03 AMEND: 3340.42 REPEAL: 3340.42.1

01/21/03 ADOPT: 1356.6

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04/14/03 ADOPT: 13676 AMEND: 13675

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02/27/03 AMEND: 6020, 6025, 6035, 6050, 6051, 6065, 6070, 6075

02/27/03 AMEND: 60201

02/25/03 ADOPT: 6903 (b)

02/10/03 ADOPT: 30315.10, 30315.20, 30315.22, 30315.23, 30315.24, 30315.33, 30315.34, 30315.35, 30315.36, 30315.50, 30315.51, 30315.52, 30315.60, 30316, 30316.10, 30316.20, 30316.22, 30316.30, 30316.40, 30316.50, 30316.60, 30316.61, 30317, 30317.10, 30317.20, 303

02/03/03 ADOPT: 93113

01/14/03 AMEND: 50413, 50425, 50753, 50766, 50810, 54355, 57210, 57433, 58033

01/14/03 AMEND: 52000, 52082, 52084, 52109, 52170, 52171, 52173, 52175

01/09/03 ADOPT: 1029.31, 1029.32, 1029.33, 1029.34, 1029.108, 1029.116, 1029, 124, 1029.132, 1029.133, 1029.154, 1029.195, 1031.7, 1034, and 1035.1 AMEND: 1031.4, 1031.5 REPEAL: 1034, 1034.1

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04/28/03 ADOPT: 2303, 3020, 3021, 3301, 3302, 3501, 3502, 4105, 4901, 4902 AMEND: 1124, 1177, 1178, 1248, 1271, 1332, 1335, 1422, 1470, 2250, 2255, 2343, 2431, 2432, 2500, 2570, 4026, 4027 REPEAL: 2344, 2345, 2346

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03/25/03 ADOPT: 19032

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02/04/03 ADOPT: 2570 AMEND: 2500, 2538, 2552

02/04/03 AMEND: 122.5

02/04/03 AMEND: 1616

01/23/03 ADOPT: 17053.36, 10753.37, 23636, 23637

01/23/03 ADOPT: 1807

01/21/03 AMEND: 25137-2
 01/15/03 AMEND: 904
 01/14/03 AMEND: 21(e)(1)(A)
 01/09/03 AMEND: 23334

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04/25/03 AMEND: 2520, 2530, 2540, 2560
 02/25/03 AMEND: 1.05, 1.07, 3.08, 3.23, 3.25, 3.26, 3.29, 3.32
 02/04/03 ADOPT: 2575, 2575.1, 2575.2, 2576, 2576.1, 2577, 2577.1, 2577.2, 2577.3, 2577.4, 2577.5, 2577.6, 2577.7, 2577.8, 2578, 2578.1, 2578.2, 2578.3

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04/08/03 ADOPT: 1237 AMEND: 1231, 1232, 1768, 1769
 04/01/03 AMEND: 1601, 1602, 1603, 1604, 1605.1, 1605.3, 1606, 1607, 1608

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02/03/03 ADOPT: 3570

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05/13/03 AMEND: 64431, 64444, 64445.1, 64468.1, 64468.2, 64468.3
 05/12/03 ADOPT: 119015, 119019, 119045, 119069, 119076, 119191
 05/06/03 AMEND: 1326-12
 05/05/03 ADOPT: 115500, 115510, 115520
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 04/29/03 ADOPT: 97170, 97172, 97174, 97176, 97178, 97180, 97182, 97184, 97186, 97188, 97190, 97192, 97194, 97196, 97198
 04/28/03 ADOPT: 4407.1
 04/10/03 ADOPT: 51509
 04/08/03 AMEND: 1256-9, 1253.12-1, 1030(a)-1
 04/04/03 AMEND: 51319, 51507.2, 51515, 51517, 51521
 04/03/03 ADOPT: 64806
 04/01/03 AMEND: 51215.6
 04/01/03 AMEND: 926-3, 926-4, 926-5
 04/01/03 AMEND: 66262.54, 66264.71, 66264.72, 66265.71, 66265.72, 66270.30
 03/26/03 ADOPT: 69000, 69000.5, 69001, 69002, 69003, 69004, 69005, 69006, 69007, 69008, 69009, 69010, 69011, 69012, 69013
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 03/20/03 ADOPT: 67391.1
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02/10/03 ADOPT: 69100, 69101, 69102, 69103, 69104, 69105, 69106, 69107

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 AMEND: 66261.9, 66264.1, 66265.1, 66268.1, 66270.1, 66273.1, 66273.4, 66273.8, 66273.9, 66273.13,

02/03/03 ADOPT: 51200.01 AMEND: 51000.4, 51000.30, 51000.45, 51000.50, 51000.55, 51200, 51451

02/03/03 ADOPT: 1111560

01/27/03 AMEND: 51510, 515110.1, 51510.2, 51510.3, 515111, 51511.5, 515111.6, 51532.3, 51535, 51535.1, 51544, 54501

01/24/03 AMEND: 84001, 84022, 84061, 84063, 84065, 84800, 84801, 84802, 84802.1, 84803, 84804, 84805, 84806, 84807, 84808

01/21/03 AMEND: 51516.1

01/13/03 ADOPT: 100040, 100041, 100031, 100039, 100042, 100043, AMEND: 100031, 100032, 100033, 10034, 100035, 100036, 100038, 100040, 100041 RE-PEAL: 100037, 100039, 100043

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04/03/03 ADOPT: 110226, 110242, 110251, 110336, 110337, 110355, 110485, 110547, 110615, 116004, 116018, 116036, 116038, 116042, 116061, 116062, 116063, 116100, 116102, 116104, 116106, 116108, 116110, 116114, 116116, 116118, 116120, 116122, 116124, 116130, 116132,

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04/28/03 ADOPT: 2729, 2729.1
 04/14/03 AMEND: 3955
 04/01/03 AMEND: 2521
 04/01/03 AMEND: 648
 03/11/03 ADOPT: 3717
 02/25/03 AMEND: 20164, 21110, 21570, 21640, 21685, 21780, 21860, 21865, 21870, 21880
 02/25/03 AMEND: 499.1, 499.2, 499.3, 499.4, 499.5, 499.6, 499.6.1, 499.6.2, 499.7, and 499.8
 01/13/03 ADOPT: 3963

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05/05/03 AMEND: 6932

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02/18/03 ADOPT: 1300.74.30

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04/09/03 AMEND: 19-001, 19-004.412, 19-004.412(a), renumber 19-004.9 to 19-004.42, 19-004.62, 19-005.21, 19-007.1, 20-300.32, 20-300.33
 04/09/03 AMEND: 40-107.14, 40-107.15, 42-301.2, 42-302.1, 42-302.2, 42-0302.3, 44-133.5, 44-133.8, 44-352.1, 88-832, 88-833.1
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 03/10/03 AMEND: 63-403.1, 63-405.134, 63-409.122, 63-502.31
 02/27/03 AMEND: 46-430.1, 46-430.2, 46-430.3, 46-430.4, 46-430.5 REPEAL: 46-430.42
 02/18/03 AMEND: 31-001, 31-002, 31-075, 31-401, 31-410, 31-420, 31-440, 31-445
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 01/14/03 ADOPT: 16-705

**OAL REGULATORY
DETERMINATIONS**

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
2003 OAL Determination No. 1**

April 14, 2003

Requested by:

REGINA M. BOYLE

Concerning:

**DEPARTMENT OF CORPORATIONS, and its successor, the DEPARTMENT OF MANAGED HEALTH CARE—
Issuance of limited licenses and exemptions from the Knox-Keene Act.**

Determination issued pursuant to Government Code section 11340.5.

ISSUE

Do the alleged rules of the Department of Corporations, and its successor, the Department of Managed Health Care, regarding the issuance of Knox-Keene limited licenses and licensure exemptions from the Knox-Keene Act, constitute “regulations” that are required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act?¹

CONCLUSION

The Office of Administrative Law deems as moot the issue of whether the issuance of limited licenses by the Department of Corporations before January 1, 2000, was subject to the Administrative Procedure Act because Health and Safety Code section 1349.3 strictly prohibited the issuance of limited licenses after January 1, 2000, and there is no evidence that either the Department of Corporations or the Department of Managed Health Care have issued any limited licenses since January 1, 2000.

Furthermore, the Office of Administrative Law concludes there is no rule or standard of general application concerning exemptions from Knox-Keene licensure other than those exemptions that exist in law.

BACKGROUND

At the time the request was filed with the Office of Administrative Law (OAL) on February 22, 2000, the Department of Corporations (“DOC”) was responsible for administering the Knox-Keene Health Care Service Plan Act of 1975 (“Knox-Keene Act”).² The Knox-Keene Act provides for the regulation of health

care service plans in the State of California. Health and Safety Code section 1342 declares that “It is the intent and purpose of the Legislature to promote the delivery and the quality of health and medical care to the people of the State of California . . .” and itemizes eight goals.³ Health and Safety Code section 1349 declares that

“It is unlawful for any person to engage in business as a plan in this state or to receive advance or periodic consideration in connection with a plan from or on behalf of persons in this state unless such person has first secured from the director a license, then in effect, as a plan or unless such person is exempted by the provisions of Section 1343 or a rule adopted thereunder. . . .”

On July 1, 2000, authority to administer the Knox-Keene Act was transferred to what is now called the Department of Managed Health Care (“DMHC”).⁴

In her determination request dated February 17, 2000, Ms. Boyle stated:

“Certain IPAs [Independent Practice Associations] have received ‘limited Knox-Keene licenses.’ . . . [T]here is no regulation which permits the issuance of such licenses.”⁵

Ms. Boyle also stated that providers receiving capitation should be licensed under the Knox-Keene Act. Ms. Boyle characterized the fact that providers who receive capitation were not licensed was “. . . the direct result of the creation of an informal and vague exemption . . . without compliance with the Administrative Procedure[] Act.”⁶

Accordingly, for purposes of this determination, OAL analyzes the following rules:

- (1) issuance of limited Knox-Keene Act licenses, and
- (2) unspecified exemptions from Knox-Keene Act licensure.

ANALYSIS

A determination of whether the challenged rules are “regulations” subject to the Administrative Procedure Act (APA) depends on (1) whether the APA is generally applicable to the quasi-legislative enactments of DOC and DMHC, (2) whether the challenged rules contain “regulations” within the meaning of Government Code section 11342.600, and (3) whether the challenged rules fall within any recognized exemption from APA requirements.

(1) Generally, all state agencies in the executive branch of government and not expressly exempted by statute are required to comply with the rulemaking provisions of the APA when engaged in quasi-legislative activities. (*Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120,

126–128, 174 Cal.Rptr. 744, 746-747; Gov. Code, secs. 11342.520 and 11346.) Moreover, the term “state agency” includes, for purposes applicable to the APA, “every state office, officer, department, division, bureau, board, and commission.” (Gov. Code, sec. 11000.) The DOC and the DMHC are neither in the judicial nor legislative branch of state government, and therefore, unless expressly exempted by statute, the APA rulemaking requirements generally apply to both the DOC and DMHC.

Rules adopted by the Commissioner of the DOC are expressly made subject to the APA. Corporations Code section 25614 provides in part that:

“All rules of the commissioner (other than those relating solely to the internal administration of the Department of Corporations) shall be made, amended, or rescinded in accordance with the provisions of the [APA].”

Health and Safety Code section 1343, subdivision (b), applied to the DOC when the determination request was filed and to the DMHC on and after July 1, 2000. Section 1343, subdivision (b), declares that:

“The director may by the adoption of rules or the issuance of orders deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any class of persons or plan contracts if the director finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of the persons or plan contracts is not essential to the purposes of this chapter.”

Health and Safety Code section 1342.5 required the director of the DOC when the determination request was filed and the director of the DMHC on and after July 1, 2000, to:

“. . . consult with the Insurance Commissioner prior to adopting any regulations applicable to health care service plans subject to this chapter and nonprofit hospital service plans subject to Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code and other entities governed by the Insurance Code for the specific purpose of ensuring, to the extent practical, that there is consistency of regulations applicable to these plans and entities by the Insurance Commissioner and the Director of the [DOC and later DMHC].”

Neither the DOC nor the DMHC has called our attention to, nor have we located, any statutory provision expressly exempting rules of the DOC and the DMHC from the APA. OAL therefore concludes that APA rulemaking requirements generally apply to both the DOC and the DMHC.

(2) Government Code section 11340.5, subdivision (a), prohibits state agencies from issuing rules without complying with the APA. It states as follows:

“(a) No state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [‘]regulation[’] as defined in Section 11342.600, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]”

Government Code section 11342.600 defines “regulation” as follows:

“. . . every rule, regulation, order, or standard of general application *or* the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. . . . [Emphasis added.]”

Under Government Code section 11342.600, a rule is a “regulation” for these purposes if (A) the challenged rule is *either* a rule or standard of general application *or* a modification or supplement to such a rule and (B) the challenged rule has been adopted by the agency to *either* implement, interpret, or make specific the law enforced or administered by the agency, *or* govern the agency’s procedure. (See *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251; *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, 890.)

For purposes of answering the question of whether the two rules are “regulations” as defined in Government Code section 11342.600, OAL will discuss below each rule separately.

RULE #1: ISSUANCE OF LIMITED LICENSES

Ms. Boyle stated in her determination request dated February 17, 2000:

“Certain IPAs [Independent Practice Associations] have received ‘limited Knox-Keene licenses.’ . . . [T]here is no regulation which permits the issuance of such licenses.”⁷

At the time Ms. Boyle’s determination request was filed, Health and Safety Code section 1349.3, which became operative on January 1, 2000, established the following moratorium on limited licenses:

“(a) On or after January 1, 2000, no license with waivers or limited license shall be issued to any person, including a provider or an affiliate of a provider, for the provision of, or the arranging,

payment, or reimbursement for the provision of, health care services to enrollees of another plan under a contract or other arrangement whereby the person assumes financial risk for the provision of at least both physician services and hospital inpatient and ambulatory care services to the enrollees of the plan with which the person proposes to contract or make an arrangement. On and after January 1, 2000, no licensed health care service plan shall contract with any person, other than a licensed health care service plan or licensed health care service plan with waivers for the assumption of financial risk with respect to the provision of both institutional and noninstitutional health care services and any other form of global capitation. Nothing in this section may be construed to prohibit or authorize, other than as provided by existing law, any contracting for the assumption of financial risk for health care services.

(b) An applicant for a license with waivers or a limited license that has an application on file with the director on August 1, 1999, shall be entitled to a refund of the application filing fee paid as of January 1, 2000.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.”⁸

Ms. Boyle made no assertion that DOC issued any limited licenses after January 1, 2000. Health and Safety Code section 1349.3 was still operative when jurisdiction for the administration and enforcement of the Knox-Keene Act shifted from DOC to DMHC on July 1, 2000.

In its July 27, 2000 response letter, the DMHC asserted that Health and Safety Code section 1349.3 renders the request moot:

“The amendment to Health and Safety Code section 1349.3 precludes the Department as of January 1, 2000, from issuing limited licenses to providers that accept global capitation. Because provider organizations that have capitation agreements with HMO’s do not qualify for full Knox-Keene licenses under section 1345(b), as of the present time, the Department cannot issue provider organizations any type of license. Therefore, the amendment to Health and Safety Code section 1349.3 effectively renders the issue of the determination request moot.”⁹

DMHC declared under penalty of perjury in its October 16, 2001 letter, that:

“The Department, since its initial existence, has followed the express statutory instructions and has never issued a full, limited, or license with waivers to any provider. Nor has the Department felt

compelled to adopt a regulation for something it does not do, and which is statutorily prohibited. . . .”¹⁰

DMHC’s website has a “Public Alpha Report” that lists all licensed plans as of 3/14/03.¹¹ Out of 105 total licensed plans, only four are listed as limited licenses. The most recent limited license was issued April 7, 1999, to Pro-Med Health Care Administrators. This website information is consistent with DMHC’s October 16, 2001 statement under penalty of perjury that DMHC has not issued any limited licenses since it became operative on July 1, 2000. Furthermore, this information confirms that DOC also did not issue any limited licenses after January 1, 2000.

Ms. Belsher, Ms. Boyle’s attorney, states that the fact that DMHC has taken no action to address the status of the remaining limited licenses existing at the time she wrote her letter does not render the determination request moot.¹² We do not agree. According to *Engelmann v. State Board of Education* ((1991) 2 Cal.App.4th 47, 62, 3 Cal.Rptr.2d 264, 274–275), agencies need not adopt as regulations those rules that reiterate a statutory scheme which the Legislature has already established.

It is important to note that Health and Safety Code section 1349.3 did not require existing limited licenses to be revoked. It mandated a refund to applicants who had not yet received a licensure decision from DOC, but it did not address what to do with the limited licenses already issued, and it did not declare previously-issued limited licenses to be void.

Thus, OAL deems as moot the issue of whether the issuance of limited licenses by DOC before January 1, 2000, was subject to the APA because Health and Safety Code section 1349.3 strictly prohibited the issuance of limited licenses after January 1, 2000, and there is no evidence that either DOC or DMHC have issued any limited licenses since January 1, 2000.

RULE #2: EXEMPTIONS FROM KNOX-KEENE LICENSURE

Ms. Boyle asserted there are over 300 unlicensed independent practice associations that accept prepayment in the form of capitation in exchange for providing or arranging for the provision of health care services and this “. . . is the direct result of the creation of an informal and vague exemption from the licensing requirements by the Department of Corporations, without compliance with the Administrative [Procedure] Act.”¹³

She also stated in her request that:

“It is the practice of California health plans to make flat-fee payments to health care providers, medical corporations, and shell corporations known as ‘independent practice associations’ or ‘IPAs’ which

are frequently insufficient to fully compensate the health care providers who actually provide the goods and/or services to the subscribers or enrollees of the health care services plan. *None of these persons or entities are licensed under the Knox-Keene Act, yet to the extent that they receive capitation payments for providing or arranging for the provision of health care services to subscribers or enrollees of health care service plans, they are fully within the definition of ‘health care service plans’ under Health & Safety Code § 1345(f), and are required to be licensed under the Knox-Keene Act.* [Emphasis added.]”¹⁴

She further asserted that:

“Certain IPAs have received ‘limited Knox-Keene licenses.’ Again, there is no regulation which permits the issuance of such licenses. SB 260 [Health and Safety Code section 1349.3] has created a moratorium on the issuance of limited licenses, and does not create any additional exemptions to the licensing requirement of Health & Safety Code §§ 1349 and 1353 for entities meeting the definition of HCSP [Health Care Service Plans] under Health & Safety Code § 1345(f), including provider groups.”¹⁵

Ms. Boyle’s determination request challenging unspecified exemptions from the Knox-Keene Act can be simplified to its core structure. Her basic premise is that, in her opinion, providers who receive capitation meet Health and Safety Code section 1345, subdivision (f)’s definition of a “health care service plan,” and are, therefore, legally required to be licensed pursuant to the Knox-Keene Act. She then asserts that because there are providers receiving capitation who do not have a Knox-Keene Act license, then there must be an exemption or exemptions to Knox-Keene licensure that DOC applied and DMHC continues to apply.

In a letter dated April 18, 2000, Ms. Boyle augmented her request by stating:

“To the extent that a written reflection of the rule . . . exists, I was orally informed by a duty officer in the Legal Department of the Health Plan Division of the Department of Corporations, during the week of February 17, 2000, that the exemption from the licensing requirement of Knox-Keene for provider groups receiving capitation is reflected in the written opinions or statements attached to the RFD as Exhibit ‘I.’

“To the extent that 1 CCR § 122(a)(3)(A) requires a request for determination to include ‘[a] copy of the state agency rule which is the subject of the request,’ the exemption from licensing which is challenged is reflected most accurately in Dept. of Corporations, Comm.Ops. 91/1H, 5080H, 4730H and 4664H (**Exhibit ‘I’**). [Bolding in original.]”

Ms. Boyle submitted the four DOC opinions¹⁶ as exhibits in her February 17, 2000 request.¹⁷ The four opinions were issued from 1983 through 1991.

A review of the four DOC opinions shows a case-by-case analysis of factors unique to each inquiry including but not limited to corporate structure, terms and provisions of contracts including whether functions are ministerial or not, and payment provisions. But the question remains, did DOC use a rule or standard of general application in reaching their decision in these four DOC opinions? We think not. No clear rule or standard of general application is evident in the four opinions.

We note that all four opinions contain similar statements about superseding arrangements made by third party payors. Commissioner's Opinion 91/1H issued on September 20, 1991, contains the following statement:

"Previous opinions of the Commissioner *express the view, under unique and limited facts*, that a person is not a health care service plan within the meaning of Section 1345(f), if the person's arrangements for the provision of health care services are superseded by the arrangements necessarily made by the payor itself in order for health care services to be provided to the payor's beneficiaries. (See Comm. Ops. 5080H, 4730H and 4664H.) [Emphasis added.]"

Rather than being criteria, this appears to OAL to be a summary of the three prior opinions' conclusions based on specific unique facts. We decline to extrapolate a general rule from four Commissioner opinions that expressly apply only to the specific facts in those specific inquiries. Furthermore, Ms. Boyle is also unable to identify or describe the specific rules or standards used by DOC and DMHC, if any, concerning the alleged exemptions from Knox-Keene licensure (she describes the alleged exemption as being "informal and vague").¹⁸ Thus, OAL concludes there is no rule or standard of general application concerning exemptions from Knox-Keene licensure other than what exists in law.

DATE: April 14, 2003

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ENDNOTES

- ¹ The request for determination was filed by Regina M. Boyle, later represented by Mary Lynn Belsher, Attorney at Law, 1420 "F" Street, Modesto, CA 95354. Agency responses were submitted by William Kenefick, Acting Commissioner of the Department of Corporations at the time the request was submitted, and by Jim Tucker, Chief Deputy Director of the Department of Managed Health Care. A public comment was submitted by Dick Thornley, Vice President of the California Association of Physician Organizations. The request was given a file number of 00-013. This determination may be cited as "2003 OAL Determination No. 1."
- ² Health and Safety Code section 1341.
- ³ Health and Safety Code section 1342 sets forth the eight goals in subdivisions (a) through (h) as follows:
" (a) Ensuring the continued role of the professional as the determiner of the patient's health needs which fosters the traditional relationship of trust and confidence between the patient and the professional.
 (b) Ensuring that subscribers and enrollees are educated and informed of the benefits and services available in order to enable a rational consumer choice in the marketplace.
 (c) Prosecuting malefactors who make fraudulent solicitations or who use deceptive methods, misrepresentations, or practices which are inimical to the general purpose of enabling a rational choice for the consumer public.
 (d) Helping to ensure the best possible health care for the public at the lowest possible cost by transferring the financial risk of health care from patients to providers.
 (e) Promoting effective representation of the interests of subscribers and enrollees.
 (f) Ensuring the financial stability thereof by means of proper regulatory procedures.
 (g) Ensuring that subscribers and enrollees receive available and accessible health and medical services rendered in a manner providing continuity of care.
 (h) Ensuring that subscribers and enrollees have their grievances expeditiously and thoroughly reviewed by the department."
- ⁴ Health and Safety Code section 1343, Stats. 1999, ch. 525 (AB 78). Initially known as the Department of Managed Care, the agency's name was later changed to the Department of Managed Health Care. (Stats. 2000, ch. 857 (AB 2903).)
- ⁵ Ms. Boyle's February 17, 2000 determination request, page 5, footnote 10.
- ⁶ Ms. Boyle's February 17, 2000 determination request, page 2.
- ⁷ Ms. Boyle's February 17, 2000 request, page 5, footnote 10.
- ⁸ No statute was later enacted that deleted or extended the January 1, 2002 date. Thus, as of January 1, 2002, section 1349.3 of the Health and Safety Code was no longer in effect.
- ⁹ DMHC July 27, 2000 response letter, page 3. In its May 26, 2000 response letter, the DOC stated " . . . a preliminary review of the issue raised and the documentation submitted by Ms. Boyle indicates that the issue may not require a determination as a result of the enactment of [Health and Safety Code Section 1349.3]."
- ¹⁰ DMHC response letter dated October 16, 2002, page 4.
- ¹¹ California Department of Managed Health Care, "Public Alpha Report," <<http://www.dmhc.ca.gov/library/reports/#licensed>> [as of March 14, 2003].
- ¹² At the time she submitted her letter to OAL dated August 6, 2000, Ms. Belsher stated that there were six existing limited licenses.
- ¹³ Ms. Boyle's February 17, 2000 determination request, page 2.

¹⁴. *Ibid.*, page 5.

¹⁵. *Ibid.*, page 5, footnote 10.

¹⁶. Commissioner's Opinion 91/1H (File No. OP 6095H), dated September 20, 1991, states, "THIS LETTER IS NOT AN INTERPRETIVE OPINION FOR THE REASONS STATED BELOW." (Capitalization in original.) The last paragraph of the opinion explains the status of an interpretive opinion:

"Inasmuch as interpretive opinions are issued for the principal purpose of providing a procedure by which members of the public can protect themselves against liability for acts done or omitted in good faith in reliance upon the administrative determination made in the opinion, and since there can be no such reliance where the Commissioner asserts jurisdiction with respect to a particular situation or determines that a legal requirement is applicable, advice to that effect, as contained in this letter, does not constitute an interpretive opinion."

The other three opinions, File Nos. 1985 OP 5080H, 1983 OP 4730H and 1983 OP 4664H, are deemed interpretive opinions and contain the following proviso:

"THIS INTERPRETIVE OPINION IS ISSUED BY THE COMMISSIONER OF CORPORATIONS PURSUANT TO SECTION 1344 (B) OF THE KNOX-KEENE HEALTH CARE SERVICE PLAN ACT OF 1975. IT IS APPLICABLE ONLY TO THE TRANSACTION IDENTIFIED IN THE REQUEST THEREFOR, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER TRANSACTION. [Capitalization in original.]"

The status of an interpretive opinion as being applicable to only the transaction of the inquiry is dispositive that whether a provider is a health care service plan required to have a Knox-Keene license had been made by the DOC on a case-by-case basis.

¹⁷. Among other documents submitted by Ms. Boyle was the DOC's response to a petition submitted by the California Medical Association ("CMA") that was printed in the California Regulatory Notice Register 99, No. 3-Z, pages 122—128, (requester's Exhibit C). Both the DOC's response language quoted in Ms. Boyle's February 17, 2000 request and the issue involved in the petition do not directly apply to the determination request.

On behalf of Ms. Boyle, Ms. Belsher submitted an article from the 12(1) *California Health Law News* (pp. 23-24, Spring 1992) that was written by Warren Barnes, Supervising Counsel in the Health Care Services Plan Division of the DOC as illustrating the DOC's rules for exemptions. (See Ms. Belsher letter to OAL dated 8/6/00.) However, the article, titled "Issues Related to Health Care Service Plan Licensure," clearly states that "The views expressed in this article are those of Mr. Barnes and do not necessarily reflect the views of the Commissioner or the policy of the Department of Corporations." Therefore, it cannot be attributed to the DOC or to its successor, the DMHC, and is not dispositive.

Numerous articles on the financial crisis in the health care industry and a summary of schedules for the Chapter 11 bankruptcy filing for Mission Independent Practice Association

Medical Group, Inc., were also submitted by Ms. Boyle. Although Ms. Boyle characterizes the Mission Group as having met the definition of a health care plan that was not Knox-Keene licensed and no enforcement action was taken against them, the actual document which lists debts does not establish whether or not they needed licensing or were statutorily exempted from licensing and more importantly does not contain a rule of the DOC or the DMHC. Her assertions and these documents raise enforcement and policy issues which are beyond the scope of this determination.

Ms. Boyle also submitted quotes from "Managed Care Potpourri: Medi-Cal, Workers' Compensation & Beyond," 16 Whittier L. Rev. 87, 104, (Mickelson, Angela, and Gold, Eric, and Spohn, Richard B.) [a copy of the article was submitted as Exhibit D]:

"**Question:** My understanding is the 'Pioneer Hospital' [beyond the scope of professional licensing or 'full risk' capitation] arrangements have existed for ten years. Why have they become controversial now?" How did DOC [the Department of Corporations, Health Plan Division] become aware of them?

Ms. [Mickelson]: I would be surprised if Pioneer Hospital arrangements have existed for ten years. Even if they have, DOC is not aware of everything that is occurring in the industry. Further, some of the HMOs do not know about all of the subsidiary arrangements their contracting providers are engaged in and, consequently, do not report those arrangements to DOC. Then there are other HMOs that simply choose not to report those arrangements to DOC.

In addition, I do not think that DOC suddenly became aware of the Pioneer Hospital arrangements. *Rather, I think that certain DOC regulators not only knew about, but actually approved those arrangements. The real problem is that there is disagreement among DOC regulators as to whether Pioneer Hospital downside risk and certain other provider risk sharing arrangements should be permitted. This lack of consensus has led to inconsistent regulation over the years, both from a licensing and an enforcement standpoint. The major side effect of inconsistent regulation has been the creation of an unequal playing field. This unequal playing field, and other industry pressures, caused DOC to decide to take a fresh look at its past practices and policies regarding provider risk sharing arrangements, and led to the establishment of the Risk Committee.* [February 17, 2000 request, page 7; italicized emphasis in request; underlining emphasis added.]

This statement is not an official DOC articulation of a rule, but rather is one person's opinion that there is inconsistency in licensing and enforcement, which are issues beyond the scope of this determination.

OAL can only issue a determination based on documented challenged rules. It is our opinion that all of the submitted documentation described in this footnote does not clearly establish a rule or standard of general application.

¹⁸. Ms. Boyle's February 17, 2000 determination request, page 2.

